

**MICROCOPY**

**892**

**ROLL**

**15**

# NATIONAL ARCHIVES MICROFILM PUBLICATIONS

Microfilm Publication M892

RECORDS OF THE UNITED STATES

NUERNBERG WAR CRIMES TRIALS

*UNITED STATES OF AMERICA v. CARL KRAUCH ET AL. (CASE VI)*

AUGUST 14, 1947-JULY 30, 1948

Roll 15

Transcript Volumes (English Version)

Volumes 41-43, p. 14,547-15,834

June 2-July 30, 1948



THE NATIONAL ARCHIVES  
NATIONAL ARCHIVES AND RECORDS SERVICE  
GENERAL SERVICES ADMINISTRATION

WASHINGTON: 1976



## INTRODUCTION

On the 113 rolls of this microfilm publication are reproduced the records of Case VI, *United States of America v. Carl Krauch et al.* (I. G. Farben Case), 1 of the 12 trials of war criminals conducted by the U.S. Government from 1946 to 1949 at Nuernberg subsequent to the International Military Tribunal (IMT) held in the same city. These records consist of German- and English-language versions of official transcripts of court proceedings, prosecution and defense briefs and statements, and defendants' final pleas as well as prosecution and defense exhibits and document books in one language or the other. Also included are minute books, the official court file, order and judgment books, clemency petitions, and finding aids to the documents.

The transcripts of this trial, assembled in 2 sets of 43 bound volumes (1 set in German and 1 in English), are the recorded daily trial proceedings. Prosecution statements and briefs are also in both languages but unbound, as are the final pleas of the defendants delivered by counsel or defendants and submitted by the attorneys to the court. Unbound prosecution exhibits, numbered 1-2270 and 2300-2354, are essentially those documents from various Nuernberg record series, particularly the NI (Nuernberg Industrialist) Series, and other sources offered in evidence by the prosecution in this case. Defense exhibits, also unbound, are predominantly affidavits by various persons. They are arranged by name of defendant and thereunder numerically, along with two groups of exhibits submitted in the general interest of all defendants. Both prosecution and defense document books consist of full or partial translations of exhibits into English. Loosely bound in folders, they provide an indication of the order in which the exhibits were presented before the tribunal.

Minute books, in two bound volumes, summarize the transcripts. The official court file, in nine bound volumes, includes the progress docket, the indictment, and amended indictment and the service thereof; applications for and appointments of defense counsel and defense witnesses and prosecution comments thereto; defendants' application for documents; motions and reports; uniform rules of procedures; and appendixes. The order and judgment books, in two bound volumes, represent the signed orders, judgments, and opinions of the tribunal as well as sentences and commitment papers. Defendants' clemency petitions, in three bound volumes, were directed to the military governor, the Judge Advocate General, and the U.S. District Court for the District of Columbia. The finding aids summarize transcripts, exhibits, and the official court file.

Case VI was heard by U.S. Military Tribunal VI from August 14, 1947, to July 30, 1948. Along with records of other Nuernberg

# NATIONAL ARCHIVES MICROFILM PUBLICATIONS

and Far East war crimes trials, the records of this case are part of the National Archives Collection of World War II War Crimes Records, Record Group 238.

The I. G. Farben Case was 1 of 12 separate proceedings held before several U.S. Military Tribunals at Nuernberg in the U.S. Zone of Occupation in Germany against officials or citizens of the Third Reich, as follows:

<u>Case No.</u>	<u>United States v.</u>	<u>Popular Name</u>	<u>No. of Defendants</u>
1	<i>Karl Brandt et al.</i>	Medical Case	23
2	<i>Erhard Milch</i>	Milch Case (Luftwaffe)	1
3	<i>Josef Altstoetter et al.</i>	Justice Case	16
4	<i>Oswald Pohl et al.</i>	Pohl Case (SS)	18
5	<i>Friedrich Flick et al.</i>	Flick Case (Industrialist)	6
6	<i>Carl Krauch et al.</i>	I. G. Farben Case (Industrialist)	24
7	<i>Wilhelm List et al.</i>	Hostage Case	12
8	<i>Ulrich Greifelt et al.</i>	RuSHA Case (SS)	14
9	<i>Otto Ohlendorf et al.</i>	Einsatzgruppen Case (SS)	24
10	<i>Alfried Krupp et al.</i>	Krupp Case (Industrialist)	12
11	<i>Ernst von Weissaecker et al.</i>	Ministries Case	21
12	<i>Wilhelm von Leeb et al.</i>	High Command Case	14

Authority for the proceedings of the IMT against the major Nazi war criminals derived from the Declaration on German Atrocities (Moscow Declaration) released November 1, 1943; Executive Order 9547 of May 2, 1945; the London Agreement of August 8, 1945; the Berlin Protocol of October 6, 1945; and the IMT Charter.

Authority for the 12 subsequent cases stemmed mainly from Control Council Law 10 of December 20, 1945, and was reinforced by Executive Order 9679 of January 16, 1946; U.S. Military Government Ordinances 7 and 11 of October 12, 1946, and February 17, 1947, respectively; and U.S. Forces, European Theater General Order 301 of October 24, 1946. Procedures applied by U.S. Military Tribunals in the subsequent proceedings were patterned after those of the IMT and further developed in the 12 cases, which required over 1,200 days of court sessions and generated more than 330,000 transcript pages.



Formation of the I. G. Farben Combine was a stage in the evolution of the German chemical industry, which for many years led the world in the development, production, and marketing of organic dyestuffs, pharmaceuticals, and synthetic chemicals. To control the excesses of competition, six of the largest chemical firms, including the Badische Anilin & Soda Fabrik, combined to form the Interessengemeinschaft (Combine of Interests, or Trust) of the German Dyestuffs Industry in 1904 and agreed to pool technological and financial resources and markets. The two remaining chemical firms of note entered the combine in 1916. In 1925 the Badische Anilin & Soda Fabrik, largest of the firms and already the majority shareholder in two of the other seven companies, led in reorganizing the industry to meet the changed circumstances of competition in the post-World War markets by changing its name to the I. G. Farbenindustrie Aktiengesellschaft, moving its home office from Ludwigshafen to Frankfurt, and merging with the remaining five firms.

Farben maintained its influence over both the domestic and foreign markets for chemical products. In the first instance the German explosives industry, dependent on Farben for synthetically produced nitrates, soon became subsidiaries of Farben. Of particular interest to the prosecution in this case were the various agreements Farben made with American companies for the exchange of information and patents and the licensing of chemical discoveries for foreign production. Among the trading companies organized to facilitate these agreements was the General Anilin and Film Corp., which specialized in photographic processes. The prosecution charged that Farben used these connections to retard the "Arsenal of Democracy" by passing on information received to the German Government and providing nothing in return, contrary to the spirit and letter of the agreements.

Farben was governed by an Aufsichtsrat (Supervisory Board of Directors) and a Vorstand (Managing Board of Directors). The Aufsichtsrat, responsible for the general direction of the firm, was chaired by defendant Krauch from 1940. The Vorstand actually controlled the day-to-day business and operations of Farben. Defendant Schmitz became chairman of the Vorstand in 1935, and 18 of the other 22 original defendants were members of the Vorstand and its component committees.

Transcripts of the I. G. Farben Case include the indictment of the following 24 persons:

Otto Ambros: Member of the Vorstand of Farben; Chief of Chemical Warfare Committee of the Ministry of Armaments and War Production; production chief for Buna and poison gas; manager of Auschwitz, Schkopau, Ludwigshafen, Oppau, Gendorf, Dyhernfurth, and Falkenhagen plants; and Wehrwirtschaftsfuehrer.

## NATIONAL ARCHIVES MICROFILM PUBLICATIONS

Max Brueggemann: Member and Secretary of the Vorstand of Farben; member of the legal committee; Deputy Plant Leader of the Leverkusen Plant; Deputy Chief of the Sales Combine for Pharmaceuticals; and director of the legal, patent, and personnel departments of the Works Combine, Lower Rhine.

Ernst Buerger: Member of the Vorstand of Farben; Chief of Works Combine, Central Germany; Plant Leader at the Bitterfeld and Wolfen-Farben plants; and production chief for light metals, dyestuffs, organic intermediates, plastics, and nitrogen at these plants.

Heinrich Bueteffisch: Member of the Vorstand of Farben; manager of Leuna plants; production chief for gasoline, methanol, and chlorine electrolysis production at Auschwitz and Moosbierbaum; Wehrwirtschaftsfuehrer; member of the Himmler Freundeskreis (circle of friends of Himmler); and SS Obersturmbannfuehrer (Lieutenant Colonel).

Walter Duerrfeld: Director and construction manager of the Auschwitz plant of Farben, director and construction manager of the Monowitz Concentration Camp, and Chief Engineer at the Leuna plant.

Fritz Gajewski: Member of the Central Committee of the Vorstand of Farben, Chief of Sparte III (Division III) in charge of production of photographic materials and artificial fibers, manager of "Agfa" plants, and Wehrwirtschaftsfuehrer.

Heinrich Gattineau: Chief of the Political-Economic Policy Department, "WIPO," of Farben's Berlin N.W. 7 office; member of Southeast Europe Committee; and director of A.G. Dynamit Nobel, Pressburg, Czechoslovakia.

Paul Haefliger: Member of the Vorstand of Farben; member of the Commercial Committee; and Chief, Metals Departments, Sales Combine for Chemicals.

Erich von der Heyde: Member of the Political-Economic Policy Department of Farben's Berlin N.W. 7 office, Deputy to the Chief of Intelligence Agents, SS Hauptsturmfuehrer, and member of the WI-RUE-AMT (Military-Economics and Armaments Office) of the Oberkommando der Wehrmacht (OKW) (High Command of the Armed Forces).

Heinrich Hoerlein: Member of the Central Committee of the Vorstand of Farben; chief of chemical research and development of vaccines, sera, pharmaceuticals, and poison gas; and manager of the Elberfeld Plant.

Max Ilgner: Member of the Vorstand of Farben; Chief of Farben's Berlin N.W. 7 office directing intelligence, espionage, and propaganda activities; member of the Commercial Committee; and Wehrwirtschaftsfuehrer.

Friedrich Jaehne: Member of the Vorstand of Farben; chief engineer in charge of construction and physical plant development; Chairman of the Engineering Committee; and Deputy Chief, Works Combine, Main Valley.

August von Knieriem: Member of the Central Committee of the Vorstand of Farben; Chief Counsel of Farben; and Chairman, Legal and Patent Committees.

Carl Krauch: Chairman of the Aufsichtsrat of Farben and Generalbevollmaechtigter fuer Sonderfragen der Chemischen Erzeugung (General Plenipotentiary for Special Questions of Chemical Production) on Goering's staff in the Office of the 4-Year Plan.

Hans Kuehne: Member of the Vorstand of Farben; Chief of the Works Combine, Lower Rhine; Plant Leader at Leverkusen, Elberfeld, Uerdingen, and Dormagen plants; production chief for inorganics, organic intermediates, dyestuffs, and pharmaceuticals at these plants; and Chief of the Inorganics Committee.

Hans Kugler: Member of the Commercial Committee of Farben; Chief of the Sales Department Dyestuffs for Hungary, Rumania, Yugoslavia, Greece, Bulgaria, Turkey, Czechoslovakia, and Austria; and Public Commissar for the Falkenau and Aussig plants in Czechoslovakia.

Carl Lautenschlaeger: Member of the Vorstand of Farben; Chief of Works Combine, Main Valley; Plant Leader at the Hoechst, Griesheim, Mainkur, Gersthofen, Offenbach, Eystrup, Marburg, and Neuhausen plants; and production chief for nitrogen, inorganics, organic intermediates, solvents and plastics, dyestuffs, and pharmaceuticals at these plants.

Wilhelm Mann: Member of the Vorstand of Farben, member of the Commercial Committee, Chief of the Sales Combine for Pharmaceuticals, and member of the SA.

Fritz ter Meer: Member of the Central Committee of the Vorstand of Farben; Chief of the Technical Committee of the Vorstand that planned and directed all of Farben's production; Chief of Sparte II in charge of production of Buna, poison gas, dyestuffs, chemicals, metals, and pharmaceuticals; and Wehrwirtschaftsfuehrer.



Heinrich Oster: Member of the Vorstand of Farben, member of the Commercial Committee, and manager of the Nitrogen Syndicate.

Hermann Schmitz: Chairman of the Vorstand of Farben, member of the Reichstag, and Director of the Bank of International Settlements.

Christian Schneider: Member of the Central Committee of the Vorstand of Farben; Chief of Sparte I in charge of production of nitrogen, gasoline, diesel and lubricating oils, methanol, and organic chemicals; Chief of Central Personnel Department, directing the treatment of labor at Farben plants; Wehrwirtschaftsfuehrer; Hauptabwehrbeauftragter (Chief of Intelligence Agents); Hauptbetriebsfuehrer (Chief of Plant Leaders); and supporting member of the Schutzstaffeln (SS) of the NSDAP.

Georg von Schnitzler: Member of the Central Committee of the Vorstand of Farben, Chief of the Commercial Committee of the Vorstand that planned and directed Farben's domestic and foreign sales and commercial activities, Wehrwirtschaftsfuehrer (Military Economy Leader), and Hauptsturmfaehrer (Captain) in the Sturmabteilungen (SA) of the Nazi Party (NSDAP).

Carl Wurster: Member of the Vorstand of Farben; Chief of the Works Combine, Upper Rhine; Plant Leader at Ludwigs-hafen and Oppau plants; production chief for inorganic chemicals; and Wehrwirtschaftsfuehrer.

The prosecution charged these 24 individual staff members of the firm with various crimes, including the planning of aggressive war through an alliance with the Nazi Party and synchronization of Farben's activities with the military planning of the German High Command by participation in the preparation of the 4-Year Plan, directing German economic mobilization for war, and aiding in equipping the Nazi military machines.<sup>1</sup> The defendants also were charged with carrying out espionage and intelligence activities in foreign countries and profiting from these activities. They participated in plunder and spoliation of Austria, Czechoslovakia, Poland, Norway, France, and the Soviet Union as part of a systematic economic exploitation of these countries. The prosecution also charged mass murder and the enslavement of many thousands of persons particularly in Farben plants at the Auschwitz and Monowitz concentration camps and the use of poison gas manufactured by the firm in the extermination

<sup>1</sup> The trial of defendant Brueggemann was discontinued early during the proceedings because he was unable to stand trial on account of ill health.

of millions of men, women, and children. Medical experiments were conducted by Farben on enslaved persons without their consent to test the effects of deadly gases, vaccines, and related products. The defendants were charged, furthermore, with a common plan and conspiracy to commit crimes against the peace, war crimes, and crimes against humanity. Three defendants were accused of membership in a criminal organization, the SS. All of these charges were set forth in an indictment consisting of five counts.

The defense objected to the charges by claiming that regulations were so stringent and far reaching in Nazi Germany that private individuals had to cooperate or face punishment, including death. The defense claimed further that many of the individual documents produced by the prosecution were originally intended as "window dressing" or "howling with the wolves" in order to avoid such punishment.

The tribunal agreed with the defense in its judgment that none of the defendants were guilty of Count I, planning, preparation, initiation, and waging wars of aggression; or Count V, common plans and conspiracy to commit crimes against the peace and humanity and war crimes.

The tribunal also dismissed particulars of Count II concerning plunder and exploitation against Austria and Czechoslovakia. Eight defendants (Schmitz, von Schnitzler, ter Meer, Buergin, Haefliger, Ilgner, Oster, and Kugler) were found guilty on the remainder of Count II, while 15 were acquitted. On Count III (slavery and mass murder), Ambros, Bueteftisch, Duerrfeld, Krauch, and ter Meer were judged guilty. Schneider, Bueteftisch, and von der Heyde also were charged with Count IV, membership in a criminal organization, but were acquitted.

The tribunal acquitted Gajewski, Gattineau, von der Heyde, Hoerlein, von Knieriem, Kuehne, Lautenschlaeger, Mann, Schneider, and Wurster. The remaining 13 defendants were given prison terms as follows:

<u>Name</u>	<u>Length of Prison Term (years)</u>
Ambros	8
Buergin	2
Bueteftisch	6
Duerrfeld	8
Haefliger	2
Ilgner	3
Jaehne	1 1/2
Krauch	6
Kugler	1 1/2
Oster	2
Schmitz	4
von Schnitzler	5
ter Meer	7

All defendants were credited with time already spent in custody.

In addition to the indictments, judgments, and sentences, the transcripts also contain the arraignment and plea of each defendant (all pleaded not guilty) and opening statements of both defense and prosecution.

The English-language transcript volumes are arranged numerically, 1-43, and the pagination is continuous, 1-15834 (page 4710 is followed by pages 4710(1)-4710(285)). The German-language transcript volumes are numbered 1a-43a and paginated 1-16224 (14a and 15a are in one volume). The letters at the top of each page indicate morning, afternoon, or evening sessions. The letter "C" designates commission hearings (to save court time and to avoid assembling hundreds of witnesses at Nuernberg, in most of the cases one or more commissions took testimony and received documentary evidence for consideration by the tribunals). Two commission hearings are included in the transcripts: that for February 7, 1948, is on pages 6957-6979 of volume 20 in the English-language transcript, while that for May 7, 1948, is on pages 14775a-14776 of volume 40a in the German-language transcript. In addition, the prosecution made one motion of its own and, with the defense, six joint motions to correct the English-language transcripts. Lists of the types of errors, their location, and the prescribed corrections are in several volumes of the transcripts as follows:

- First Motion of the Prosecution, volume 1
- First Joint Motion, volume 3
- Second Joint Motion, volume 14
- Third Joint Motion, volume 24
- Fourth Joint Motion, volume 29
- Fifth Joint Motion, volume 34
- Sixth Joint Motion, volume 40

The prosecution offered 2,325 prosecution exhibits numbered 1-2270 and 2300-2354. Missing numbers were not assigned due to the difficulties of introducing exhibits before the commission and the tribunal simultaneously. Exhibits 1835-1838 were loaned to an agency of the Department of Justice for use in a separate matter, and apparently No. 1835 was never returned. Exhibits drew on a variety of sources, such as reports and directives as well as affidavits and interrogations of various individuals. Maps and photographs depicting events and places mentioned in the exhibits are among the prosecution resources, as are publications, correspondence, and many other types of records.

The first item in the arrangement of prosecution exhibits is usually a certificate giving the document number, a short description of the exhibits, and a statement on the location of the original document or copy of the exhibit. The certificate is followed by the actual prosecution exhibit (most are photostats,



# NATIONAL ARCHIVES MICROFILM PUBLICATIONS

but a few are mimeographed articles with an occasional carbon of the original). The few original documents are often affidavits of witnesses or defendants, but also ledgers and correspondence, such as:

<u>Exhibit No.</u>	<u>Doc. No.</u>	<u>Exhibit No.</u>	<u>Doc. No.</u>
322	NI 5140	1558	NI 11411
918	NI 6647	1691	NI 12511
1294	NI 14434	1833	NI 12789
1422	NI 11086	1886	NI 14228
1480	NI 11092	2313	NI 13566
1811	NI 11144		

In rare cases an exhibit is followed by a translation; in others there is no certificate. Several of the exhibits are of poor legibility and a few pages are illegible.

Other than affidavits, the defense exhibits consist of newspaper clippings, reports, personnel records, Reichgesetzblatt excerpts, photographs, and other items. The 4,257 exhibits for the 23 defendants are arranged by name of defendant and thereunder by exhibit number. Individual exhibits are preceded by a certificate wherever available. Two sets of exhibits for all the defendants are included.

Translations in each of the prosecution document books are preceded by an index listing document numbers, biased descriptions, and page numbers of each translation. These indexes often indicate the order in which the prosecution exhibits were presented in court. Defense document books are similarly arranged. Each book is preceded by an index giving document number, description, and page number for every exhibit. Corresponding exhibit numbers generally are not provided. There are several unindexed supplements to numbered document books. Defense statements, briefs, pleas, and prosecution briefs are arranged alphabetically by defendant's surname. Pagination is consecutive, yet there are many pages where an "a" or "b" is added to the numeral.

At the beginning of roll 1 key documents are filmed from which Tribunal VI derived its jurisdiction: the Moscow Declaration, U.S. Executive Orders 9547 and 9679, the London Agreement, the Berlin Protocol, the IMT Charter, Control Council Law 10, U.S. Military Government Ordinances 7 and 11, and U.S. Forces, European Theater General Order 301. Following these documents of authorization is a list of the names and functions of members of the tribunal and counsels. These are followed by the transcript covers giving such information as name and number of case, volume numbers, language, page numbers, and inclusive dates. They are followed by the minute book, consisting of summaries of the daily proceedings, thus providing an additional finding aid for the transcripts. Exhibits are listed in an index that notes the

type, number, and name of exhibit; corresponding document book, number, and page; a short description of the exhibit; and the date when it was offered in court. The official court file is summarized by the progress docket, which is preceded by a list of witnesses.

Not filmed were records duplicated elsewhere in this microfilm publication, such as prosecution and defense document books in the German language that are largely duplications of the English-language document books.

The records of the I. G. Farben Case are closely related to other microfilmed records in Record Group 238, specifically prosecution exhibits submitted to the IMT, T988; NI (Nuernberg Industrialist) Series, T301; NM (Nuernberg Miscellaneous) Series, M-936; NOKW (Nuernberg Armed Forces High Command) Series, T1119; NG (Nuernberg Government) Series, T1139; NP (Nuernberg Propaganda) Series, M942; WA (undetermined) Series, M946; and records of the Brandt case, M887; the Milch Case, M888; the Altstoetter case, M889; the Pohl Case, M890; the Flick Case, M891; the List case, M893; the Greifelt case, M894; and the Ohlendorf case, M895. In addition, the record of the IMT at Nuernberg has been published in the 42-volume *Trial of the Major War Criminals Before the International Military Tribunal* (Nuernberg, 1947). Excerpts from the subsequent proceedings have been published in 15 volumes as *Trials of War Criminals Before the Nuernberg Military Tribunal Under Control Council Law No. 10* (Washington). The Audiovisual Archives Division of the National Archives and Records Service has custody of motion pictures and photographs of all 13 trials and sound recordings of the IMT proceedings.

Martin K. Williams arranged the records and, in collaboration with John Mendelsohn, wrote this introduction.



NATIONAL ARCHIVES MICROFILM PUBLICATIONS

Roll 15

Target 1

Volume 41, p. 14,547-14,981

June 2-4, 1948

NATIONAL ARCHIVES MICROFILM PUBLICATIONS

# **OFFICIAL RECORD**

## **UNITED STATES MILITARY TRIBUNALS NÜRNBERG**

**CASE No. 6 TRIBUNAL VI  
U.S. vs CARL KRAUCH et al  
VOLUME 41**

**TRANSCRIPTS  
(English)**

**2-4 June 1948 pp. 14547-14981**

Official Transcript of the American Military Tribunal No. VI in the matter of the United States of America against Carl Krauch, et al, defendants sitting in Nurnberg, Germany, on 2 June, 1948, Justice Curtis G. Shako, presiding.

THE MARSHAL: The Honorable, the Judges of Military Tribunal VI.

Military Tribunal VI is now in session. God save the United States of America and this Honorable Tribunal.

There will be order in the Court.

THE PRESIDENT: You may report, Mr. Marshal.

THE MARSHAL: May it please your Honors, all the defendants are present.

THE PRESIDENT: Now, gentlemen, the Tribunal now declares officially on the record the evidence in this case closed, and the Tribunal is now ready to hear the arguments of counsel for the defendants.

PROFESSOR WAHL (on behalf of all the defendants):

May it please the Tribunal,

In a critical survey of the big Nuremberg Trial, George A. Finch, the Chief Editor of the "American Journal of International Law" pointed out, in one of the last issues, that the Russian Professor Trainin, a member of the Law Institute of the Moscow Academy of Science, had had an extraordinarily effective influence on the contents of the London Charter, which he had signed as the representative of the Soviet Union. Originally the Allies had not intended to include crimes against peace in the indictment, and these crimes did not play any part in the warnings which the Allies addressed to the German Government before the cessation of hostilities. In London, however, Professor Trainin's book "The Responsibility of Hitlerism from the Standpoint of Criminal Law" was influential. In this book, Professor Trainin states: "in meting out punishment to the Axis war criminals, Russia would not permit herself to be restricted by traditional legalisms. The little success attained by previous attempts to create an international criminal law can be explained by the fact that the purpose



pursued by the capitalist countries was in reality not to combat international crimes, but to create a united criminal front against the Soviet Union. "This," he continues, "is, by no means, accidental. Its roots can be traced to the general character of international legal relations during the era of Imperialism". These statements strongly influenced Jackson, who, as Finch ascertained, uses almost the identical words in his report of 7 July 1945, which preceded the signing of the London Charter: "We must not permit the state of law to become complicated or obscured by legalisms developed in the era of Imperialism for the purpose of making war respectable."

In particular, Trainin proposes to attribute personal guilt for crimes against peace not only to the members of armies and governments, but also to propagandists, capitalists and industrialists. A significant light is thrown in this connection on the provisions of Control Council Law No. 10, Article II, Number 2f, concerning the criminal responsibility of the economic leaders (Wirtschaftsfuehrer) which, according to the text, is sufficient in itself to justify conviction, but which the Prosecution understands to be merely a supposition of guilt (Schuldvermutung).

Thus it is this trial in particular which is overshadowed by the Russian ideology and by the fight against the old and revered legal traditions of the civilized world, which is stigmatized as an outcome of the capitalist and imperialist ideology. However worthy of respect may be Jackson's idealism, this is, nevertheless, his opinion and not that of American jurisprudence or that of his colleagues in the Supreme Court of the United States. The more I searched the rich American legal literature, the more was this impression strengthened by my studies. Strong legal ethics were perceptible there which refute the Soviet insinuations, and I cannot refrain from quoting the words of Murphy in the Yamashita case, though they were expressed in a dissenting opinion, because they disclose with deep feeling the crisis which justice is undergoing in such trials and

at the same time, emphasize the high and indestructible dignity of old legal traditions. Murphy states: "The inalienable rights of the individual, including those guaranteed by the "due process" clause of the Fifth Amendment, do not apply only to the nations which have excelled on the battle field or to those which have dedicated themselves to the democratic ideology. They apply to all people in the world, whether victorious or defeated, whatever their race, color or creed. They rise above any methods of warfare and above any prescription. They survive all temporary popular passion and fury. Neither a court, nor the legislative or executive powers, not even the mightiest army in the world, can ever abolish them. Such is the universal and indestructible nature of the civil rights....."

He also states: "The necessity of punishing war criminals does not justify the abandonment of our respect for justice....., to draw any other conclusion would mean that the enemy may have lost the battle, but succeeded in destroying our ideals."

This Tribunal, too, is on the side of the law. For the first time in the course of the Nuremberg trials, it has appointed a Special Counsel of all Defendants for fundamental questions of law, which it obviously does not regard as legalisms having the only purpose to complicate and obscure the trial. At this point, I wish to avail myself to the opportunity to express my sincere thanks to the Tribunal. It is this very attitude which encourages me to express my doubts from a legal point of view without any hesitation, restricting myself, of course, to the most substantial points, after having had the opportunity in my closing brief to discuss in detail the entire complex of questions.

Shortage of time will not permit me to discuss all questions of legal procedure, and I shall omit detailed evidence that this High Tribunal is an American Military Commission operating under an order of the Control Council.



Reverting to the main objection of retroactive penal law, I shall begin with the question as to whether this High Tribunal is authorized and obligated to take into consideration the extraordinarily grave doubts which were raised against the opinion contained in the IMT judgment by the international critics, especially in America.

To anticipate the outcome, the Defense takes the standpoint that American courts are bound, on legal grounds alone, to acquit the defendants in the industrial trials at least, since the London Agreement is the sole basis for the IMT Judgment and this must be described as a bill of attainder i.e., as subsequent legislation for the punishment of past actions, and as an ex post facto law as understood in American Law, and consequently does not empower an American court to impose a penalty. These conceptions of American Constitutional law played no part in the IMT judgment because of the International nature of the Tribunal, so that to this extent, in view of the different nature of the problem, no precedent exists. If the intention of Article 10 of Ordinance No. 7 was to prohibit the American Military Tribunal from examining the IMT judgment from the viewpoint of the preservation of constitutional rights, this regulation would itself be invalid because it would violate the American Constitution.

But even if the court in question is an international one, the objection retains its force, for it must not be overlooked that in accordance with the principles inherent in the obligation to observe precedent, the obligation always ceases if the material conditions which were to be dealt with in the precedent differed essentially from the facts now under consideration.

This is the case here. Whereas in the IMT leaders of the State or other political figures in leading positions were concerned, this time it is a question of the punishment of private persons. This distinction is not of minor importance, especially in connection with the prohibition against retroactive criminal laws. Jackson himself defended in principle

the validity of the precept "nulla poena sine lege", but added:

"But these men cannot claim that such a principle, which in many legal systems forbids laws with retroactive effect, must also apply in their case. They cannot prove that they have ever in any situation based their actions on international law or concerned themselves with it to the slightest degree." (Page 57).

The French Prosecutor Francois de Monthon in his speech for the Prosecution on 17 January 1946 stated in similar vein that

"The juridical doctrine of National-Socialism admitted that in domestic criminal law even the judge can and must supplement the law. The written law no longer constituted the Magna Carta of the delinquent. The judge could punish when, in the absence of a provision for punishment, the National Socialist sense of justice was gravely offended."

After a lengthy quotation from a speech by the then Juristenfuhrer Frank at the German lawyers' diet of 1936, he continues:

"It would suit the defendant Frank and his accomplices very ill to find fault with the lack of special written penal provisions." (Page 7).

KEISEN, Professor of the State University of California, makes use of the same argument when he writes:

"..... The infliction of an evil, if not carried out ..... as a reaction against a wrong, is a wrong itself. The non-application of the rule against ex post facto laws is a just sanction inflicted upon those who have violated this rule and hence have forfeited the privilege to be protected by it." (from "The rule against ex post facto laws and the prosecution of the Axis war criminals" in "The Judge Advocate Journal," Vol. II, page 46 - Case Winter 1945).

This shows that the punishment of the accused Nazi leaders was guided by the idea of retaliation rejecting the objection nulla poena sine lege,

an idea of retaliation which must cease to apply in the case of the accused businessmen and industrialists. In view of the wide range of legal precepts found in precedents, it is essential to work out the necessary distinctions; and these distinctions must here lead to the inapplicability of the precedent, since the defendants in this trial cannot, like the defendants in the first trial, be charged with violation of the precept of *nulla poena sine lege*.

Even during the preliminary work in the American government offices which preceded the London decisions, viewpoints arose which pointed in the same direction.

1)  
Murray C. Bernays<sup>1)</sup>, who as Colonel and Chief of the Special Projects Branch of GI General Staff took part in the authoritative decisions of the War and State Department on the prosecution of the main war criminals, writes:

"All doubts and problems which arose in open discussion on criminal prosecution and many more over and above those were investigated thoroughly in the War Ministry and the Ministry for Foreign Affairs and other offices in Washington, before the plan was finally approved. As Chief of the Special Projects Branch of the General Staff, the writer can attest to this from personal knowledge, both of the original introduction of the plan and of its perusal step by step. There were those who advocated the punishment of the Nazi leaders simply by a decree from the Allied governments. They questioned the necessity and also the wisdom of legal proceedings. Others rejected the fundamental conception of the plan, including the precept that war of aggression is a crime. It is a tribute to the vitality of democratic traditions that before unanimity could be reached on the course to be taken, the American government had to be satisfied that we should truly be doing justice, even in the case of such a brutal enemy and even in the face of provocation, the obscene cruelty of which has seldom found its equal."

Bernays also deals expressis verbis with the objection of ex post facto law and has no more to say on the subject than that Hitler wanted inter alia to attack the United States as well, and brings as proof an other wise disputed document to show that Hitler, in a speech to his "fellow conspirators" in 1939, declared:

---

I)  
"Survey Graphic", January 1946, Page 7 ff.



"I am afraid of only one thing, and that is that Chamberlain or some other filthy swine will turn up with a proposal for a change of mind. He will be thrown out, even if I myself have to stamp on his belly in front of all the photographers. The invasion and elimination of Poland begins on Saturday morning."

In the same document it is stated that the speech was received with enthusiasm and that Goering jumped up on the table and danced.

In view of the depravity of the German Fuehrer clique, Bernays wants to convince his readers of the senselessness of any legal objection to their being punished.

Even if one could adopt this standpoint, the question remains: What have these businessmen and industrialists, none of whom took part in the Fuehrer's conferences which are so critical according to the IMF judgment, to do with the policy of the highest Nazi government clique? They have a right to be judged by the law as it stands.

To refer now to Count I on preparation for a war of aggression; the Defense does not wish to be misunderstood: there can be no doubt that everything must be done to prevent a war of aggression in the future.

The most important task would be to create an international organization which, by virtue of its authority, would be in the position to force a decision in all international dissensions by purely peaceful means. In such an organization, new penal standards would have a major role to play. Humanity has suffered too severely as a result of the war not to long to the very core of its being for lasting peace. It must be stated, however, that at the outbreak of the Second World War, a legal state such as this, in which the sovereignty of the various governments would be restricted by the existence of penal regulations governing a war of aggression, had not yet been



achieved.

In the first place, the attitude adopted by the IMT to the sentence "nulla poena sine lege" is not quite clear. It is first stated that this principle is a primary requisite of justice, in the same breath, we are told, however, that it in no way restricts the sovereignty of the individual States; but then again, so much at least of the principle is retained that, we are told, at the time when the action was undertaken, and all, a crime, in the legal sense, must already have been committed, and all efforts are directed to the establishment of the fact that the criminal nature of the action had been a well-known fact for decades past.

This attitude is in itself only a half-truth. Are there crimes for which no punishment is proscribed? The I.T. Judgment replies: It was precisely in international law that there had always been *leges imperfectae* which, without involving express threat of punishment, had formed the basis of criminal proceedings, a fact of which the punishment of violations of the Hague Land Warfare Convention was constantly furnishing proof. This comparison is invalid, however, for infringements of Military Law have always been punished by the law of common usage. They therefore rank as crimes even in the case of a country which is not a signatory of the Hague Land Warfare Convention. In this case, we are concerned purely with the law of common usage, among the hypotheses for which figure the proof of precedent and the *opinio necessitatis*. One can see that there is no crime without punishment, and that in itself suggests the conclusion that the outlawing of war by the Kellogg Pact doesn't stigmatize war as a crime in the legal sense, as there is no mention of punishment of the governments concerned, the only sanction provided for being the loss of rights under the Kellogg Pact on the part of the government violating the terms of the agreement.

In connection with the case of the German Kaiser, to which the

IMT Judgment refers, Kelsen, Professor of the University of California, rightly draws attention in his paper, "Will the Judgment in the Nuremberg Trial Constitute a Precedent in International Law?" (published in the International Law Quarterly, Vol. I, No. 2, Summer 1947.) to the fact that, apart from Article 227 of the Treaty of Versailles, there was no legal principle to be cited in proof of the fact that the German monarch was liable to punishment. He says: "When the victors in the first World War intended to bring William II to trial - not for a crime against the peace - but 'for a supreme offense against the international morality and the sanctity of treaties', they thought it necessary to insert the provisions establishing, with retroactive force, his capacity as organ of the German Reich into the peace treaty signed and ratified by this State."

For this reason, the USA established, in the Committee formed in 1919, the impossibility of proving a legal basis for the charge against the German Kaiser (c.f. J. Brown Scott: House Seymour, "What really happened at Paris", London 1921, Pages 237, 239.)

Accordingly, in its note dated 21 January 1920, refusing the Allies' demand that the Kaiser be handed over to them, the Netherlands' Government stated that it could not recognize any legal obligation to associate itself with an act of international policy on the part of the Powers they say:

"If in the future, we should succeed through the League of Nations in creating an international legal system having the authority to judge acts which have been classed as crimes by charters drawn up at an earlier date, and which, as such are sanctioned, then the Netherlands will associate itself with the new order of things." That is, the Netherlands Government saw in Article 227 of the Treaty of Versailles a retroactive penal law which was therefore not a legally defensible basis for the Allies' demand that the Kaiser be delivered up to them.

The prevailing doctrine in international law - linked, for the rest, with the observance of the sovereignty of the individual governments - was in fact the provision in accordance with which the conduct of a war does not, in the eyes of the law, constitute a crime on the part of the members of the Government. KEISEN9 op. cit.) draws attention to the fact that the term "criminal" as applied to war in international law as it was at that time did not in any way imply that the governments conducting the war was liable to punishment.

"An illegal war may be called an "international crime" and has been so called in the Geneva Protocol of 1924 for the Pacific Settlement in International Disputes, and in a Resolution of the Eighth Assembly of the League of Nations (but not in the Briand-Kellogg Pact). This term, however, does not mean - as the International Military Tribunal erroneously declares in its Judgment - "that those who plan and wage such a war with its inevitable and terrible consequences are committing a crime in so doing."

In this connection, the Committee Report of the Polish Delegate BOKAL on the Geneva Resolution of 1927 is particularly informative. As is well known, this Resolution was not ratified; it has, however, been introduced into the IIF Judgment as proof.



of the legal validity of the argument that wars of aggression are criminal. In this Resolution, war is described as criminal. BOKAL states:

"While agreeing that a resolution does not constitute a legal instrument as such, materially augmenting security and sufficient unto itself, the Third Committee is unanimous in its intention to appreciate its high moral and educative value."

Moreover, Professor Max RADIN of the University of California writes:

"The word 'international crime' used about an aggressive war in the Geneva Protocol of 1924 cannot be rated higher now than it was rated then, as a rhetorical term - a noble rhetoric, to be sure - but not a term with definite legal content."

If, in fact, the application to war of the epithet "criminal" has merely a moral and educative value, the milder term "Outlawry" used in the Kellogg-Pact cannot be used as the basis for establishing the liability to punishment of the Governments involved. It was the intention of the fathers of the Kellogg-Pact to impose certain moral sanctions on the aggressor, to expose him to the moral judgment of public opinion throughout the world. In "Nuernberg als Rechtsfrage", Klett-Verlag Stuttgart, my colleague Wilhelm GREWE, Professor of National and International Law at the University of Freiburg, writes: "It is dangerous and indefensible - if the agreement is to be interpreted in its true sense - to attempt, as was done in the thirties and in the course of the recent war, to justify by means of the Kellogg-Pact a partial suspension of Military Law and the Laws of Neutrality insofar as the State violating the agreement was concerned. The attempt, however, on the part of Sir Hartley Shawcross, and with him his colleagues and the Tribunal, to deduce in addition from the text and system of the Kellogg-Pact direct criminal liability, under the terms of international law, of the individual persons responsible for the violation of the pact, appears to be totally and completely lacking in legal

justification."

The following are the factors opposing such an attempt: None of the Governments signing the Kellogg Pact in 1928 in fact so much as thought of criminal liability in the eyes of the law of individual persons. So much can be clearly seen from a statement made by Secretary of State Kellogg before the Foreign Affairs Committee of the Senate of the U.S.A. on 7 December 1928: "How we can assume that the United States was under a moral obligation to go to Europe in order to punish the aggressor or belligerent party, when no such proposal was made throughout the negotiations, when no one agreed to such a settlement and when, in fact, no such obligation exists -- is beyond my comprehension. I cannot understand it. As I see the matter, we are under no more binding obligation to punish someone for violating a pact of non-aggression than we are to punish him for the violation of any other agreement concluded with us." Wilhelm Grewe<sup>1</sup> rightly comments:

"Does that mean that one presupposes the right to punish a person? On the contrary. It is obvious merely from the examination of the logical processes of the law that this would in itself imply the denial of the power to inflict punishment: For when has there ever been a case in which the violation of an agreement by one party has bestowed upon the other the power to inflict punishment under international law? Cancellation of the treaty, reparations, if need be reprisals -- those are the provisions made by the law to deal with cases of breach of agreement -- but of the "punishment" of the State violating the agreement or of the individual persons responsible for the violation thereof, there has never been any question. International law cannot be thus changed in its fundamentals from one day to the next while the world stands by and watches in silence."

The Foreign Affairs Committee of the Senate of the U.S.A. submitted the following report to the plenary session of the Senate on 15 January 1929.

1) sp.cit. pp 105 ff.

"The Committee is of the opinion that neither the spirit nor the letter of the agreement provides for sanctions.

Should any signatory of the agreement or any State later associating itself with the agreement violate any of the provisions thereof, there is nothing either in the letter or in the spirit of the agreement to indicate obligation or liability on the part of the other signatories to impose a punishment or resort to force against the State violating the agreement. The effect of the violation of the agreement by one of the signatories is to release the other signatories from all obligations undertaken in that agreement towards the State violating the agreement."

On 8 August 1932, Secretary of State STIMSON said before the Council on Foreign Relations in New York:

"The Briand-Kellogg -Pact does not provide for any compulsory sanctions. It does not demand of any signatory that it should use force in the event of violation of the agreement. It rather attaches supreme importance to the sanction of public opinion, which can be made into one of the most powerful sanctions in the world."

Moral sanctions against the State violating the agreement but not the liability to punishment of the individual persons responsible for the violation thereof were thus understood by the signatories of the Kellogg-Pact to be the consequences of violation of the agreement.

The same conclusion can be drawn from the conduct of the Powers in earlier cases of violation of the Kellogg-Pact. RADIN, Professor of the University of California, writes:

"If the violation of the Kellogg-Briand-Pact or of the Geneva Protocol constitutes a crime, either for the nation or for the persons instigating it, the the conduct at the time of all the Powers that joined in creating the Tribunal at Nuerenberg puts them in the unfortunate light of having acquiesced in what they now denounce as criminal. No official protest was made by those Powers when acts violating the Pact were committed. The personal indignation of such high-minded men as Mr. Stimson, Secretary of State, when Japan invaded Manchuria was



shared, so far as our records go, neither by the President nor the Congress. And if it was shared by the majority of the people, there is abundant reason to hold that at that time no substantial number of Americans would have approved of war on Japan because of it. Did the United States, did Great Britain, France, and Russia become accessories after the fact in these crimes when they declined to treat them as crimes and continued close relations both with the nations that had committed them and the persons who had instigated them? It is hard to understand why that conclusion does not follow."

The examples in connection with this point are multiple: The following should be mentioned: The Chaco war in 1934, the conquest of Abyssinia by Italy in 1935-36, the China-Japan conflict in 1937 and finally the Russo-Finnish war in 1939/40. In his lengthy plea before the IMT, my colleague Jahrreis of the University of Cologne rightly stressed the point that the entire system of collective security had broken down completely at the outbreak of the second World War, that in none of these cases was there any mention of any liability of the governments of the aggressor States to punishment, that diplomatic negotiations were even taken up shortly afterwards, leading, in many cases, to the recognition of the annexations.

When all is said and done, we must concur with Professor Radin's opinion about the question of ex post facto law as expressed in the book cited above:

"I do not think that in the many discussions of the matter by Mr. Jackson and others the challenge has been met," and Professor Kelsen is right when he recognizes the London Agreement, that is, "special international law", as the sole basis of the IMT Judgment and refuses to accord the IMT Judgment the significance of a genuine precedent in the sense of general international law. The Chief Editor of the "American Journal of International Law", Mr. Finch, comes to the same conclusion in his treatise mentioned at the beginning.

Finally, there is the anxious warning of the Harvard Professor Hanley O. Hudson to guard the integrity of international treaty instruments against the falsification of their meaning. Under the heading, "Integrity of International Instruments", he writes:

"It is difficult to conceive of the possibility of making substantial progress in the development of international law unless a scrupulous respect obtains for the integrity of international instruments. Yet a tendency now seems to prevail in some quarters to undermine that respect by torturing the meaning of great international instruments and by forcing them to serve purposes for which they were never designed, purposes at variance with the desires entertained by Governments when the instruments were brought into force. Evidence of this tendency was supplied by the International Military Tribunal at Nuremberg when it gave a spurious application to provisions of the Paris Treaty for the renunciation of war as an instrument of national policy." It can therefore only be a question of refuting the oft-attempted evidence that, despite the open break with international tradition, there was no infringement of the principle of nulla poena sine lege. Even those who welcome the judgment as legal progress and regard it as characteristic of the gradual development of case law that new ideas of law permeate imperceptibly into jurisdictional practice without there being any question of a break with the past, admit that, up to the IMT Judgment, no penal sanction for aggressive war had existed. This is a way of thinking that may possibly be feasible from the point of view of an historian, but from the standpoint of the judge it is a monstrosity. It is certainly true that, in the course of development by the gradual abandonment of old legal conceptions, or the gradual introduction of new legal ideas, case law has adapted itself to the prevailing social and customary changes, but if there is any step in the development of law that requires a perfectly clear attitude as to whether the judge stands by what has been handed down, as is his duty,

or whether he creates new law, which in principle should be left to the legislators, it is the introduction of the death sentence for an act for which, at the time of its commission, there was no question of penal sanction. To use here the parallels of those cases of extensive or restrictive interpretation of an old legal maxim, is to say the last, an astounding lack of judgment, in which political considerations have more weight than legal impartiality. What sense would remain in the prohibition of ex post facto law if in extreme cases it could be swept away by such considerations? In any case, it was in the American Constitution itself that the principle of *nulla poena sine lege* was first formulated, although the bulk of American law is case law.

If the new recognitions of the legal-sociological school for this purpose, without regard to the differences of method, are to be used, like those of the worthy Roscoe Pound, as a basis for dogmatic solutions, then we are not far removed from that dangerous attitude which places political demands in relation to law on the same level as existing law. Kelsen rightly says: "That the London agreement is only the expression, not the creation, of this new law is the typical fiction of the problematic doctrine whose purpose is to veil the arbitrary character of the acts of a sovereign lawmaker."

Neither is the conception at all true that the IMT judgment has really opened the way towards universal punishability of aggressive war. The further away legal and political developments get from the end of the war, the more the trial of the German war criminals assumes the character of a special procedure, which, for the rest, leaves unaffected the accepted non-punishability of violations of international law.

The Prosecution authorities, it is true, rightly asserted in their Trial-Brief that the codification of the new international law was planned to take place within the United Nations in the sense of the Nuremberg principles.



Closer observation shows, however, that we are far from the realization of these plans. At any rate, the Committee on the Progressive Development of International Law, after having been occupied for six months with the task of codifying the principles of the IMT Judgment, decided not to undertake the formulation of the Nuremberg principles, because it was obviously a task that demanded careful and thorough study. The Committee concluded with a resolution that it was not competent to discuss the material contents of the Nuremberg principles and that such a discussion would be better entrusted to the International Law Commission. It should further be emphasized that the representatives of Egypt, Poland, England, the Soviet Union, and Yugoslavia refused a majority decision of this Committee which expressed a recommendation that the carrying out of the principles of the Nuremberg Trial and its judgment appeared to render desirable the creation of an authorized international court which could exercise jurisdiction over such crimes.<sup>1)</sup>

Obviously, therefore, it is also wrong to base assertions, like Schick and Kelsen, on the fact that Russia's internal Penal Code likewise contains a law of retroactive punishment and insofar also violates the principles of nulla poena sine lege; the Russian breach does not go nearly as far; for this penal law is directed against the counter-revolutionary persecution and suppression of Czarist times and the confusions of civil war and was thus enacted after the full victory of the Communist revolution. In the present case, however, in the state of development reached in the summer of 1948, the conclusion can hardly be avoided that this trial was conducted in such a manner, at the expense of the defendants, as though

1) cf. Schick "Crimes against Peace" in the "Journal of Criminal Law and Criminology" Vol. 38 (Jan.-Feb. 1948) p. 464 ff.

a far-reaching change had taken place in the whole system of international law, whereas in reality the new ideas, even within UNO itself, are still meeting with the strongest resistance and are still very far from realization in general international law. It goes without saying that this conclusion is not meant to throw doubt on the bona fides of the initiators of the Nuernberg trials; Jackson himself demanded with the greatest emphasis that the victors should apply the new principles to themselves also. But why has the new Hague International Court of the UN merely received competence for disputes between States in the old style, without in the slightest taking into account the new ideas of international responsibility of the individual, as practised in Nuernberg? In any case, the International Criminal Court has not yet come into being, nor will it do so in the near future, for, as is well known, the mere recommendation for a decisive organ within the League of Nations and within UNO means the open avowal of strong opposition against the realization of the recommended innovation; certainly no wonder, when both the Soviet Union and England are counted among the opponents.

This development is a *senes* stamps the Nuernberg courts precisely as exceptional courts, for which a special law has been created, *ex post facto* law. That is the sore point which explains the unusually sharp condemnation of the Nuernberg trials in Anglo-Saxon quarters, into which I will not enter further here for lack of time.

I will only mention the Italian law scholar, Vedovate, Professor of International Law at the University of Florence, who closes his examination of the Nuernberg Judgement with the conclusion that it would have been more logical and more in accord with the juridical conscience to say of the defendants, in the words of Robespierre on Louis XVI:

1  
"H was not a defendant. He was an enemy. The issue wasn't holding a trial, but it was merely a measure of public welfare."

"Il n'était pas un accusé, mais un ennemi; il n'y avait pas de procès à faire, mais une mesure de salut public à prendre."

Professor Wechseler, of Columbia University, sought to justify the IMT Judgment out of the special nature of international law, by setting up the unproved and unprovable thesis that the maxim of nulla poena sine lege was an accommodation of internal State law and of its nature alien to international penal law. However, the IMT Judgment itself endeavoured to prove that its decision did not violate the precept of nulla poena sine lege.

The Netherlands Government also, when it refused to extradite the Kaiser - without at that time provoking any opposition - obviously adopted the opposite standpoint, and if international law is to be supplemented by the recognized legal principles of civilized nations, then the Proclamation of Control Council No. 3 proves that the precept which excludes retroactive penal law belongs to the great constitutional achievements of which all civilized nations are proud. At the same time, this Proclamation of the Control Council condemned a relatively mild infringement of the precept of nulla poena sine lege. The National Socialist amendment to the Penal Code had only admitted the principle of analogy to a limited extent, and the Reich Supreme Court has established that the principle of analogy would always be non-applicable when legislation had purposely left an act without prescribed punishment. In the present case, however, it is a question of the revolutionizing of the system of international law hitherto existing, of the sacrifice of the main principle itself, which can never be justified by any kind of analogy whatever. That a new situation of international



law can be created for the future by laws agreed upon by State treaties, even Wechseler would not deny, and it was just such a form of legal progress that the Netherlands Government had in mind when it declined on the basis of existing law to extradite the Kaiser.

It is precisely in international law that the danger exists of political passions favoring the abuse of law, and therefore the maxim of nulla poena sine lege is indispensable for this sphere of law. In an aide-memoire of 6 August 1942 - I am obliged for the quotation to Finch the English Government states:

"In dealing with war criminals, whatever the Court, it should apply the laws already applicable, and no special ad hoc law should be enacted."

The result of these conclusions can be summarized as follows: The sentence of the IMT Judgment for wars of aggression does not rest upon recognized principles of international law, but upon the agreement of the victor States, in which the German Reich did not participate. This agreement has the character of a Bill of Attainder and of an ex post facto law and therefore cannot be applied by an American court, any more than can the Control Council Law resulting from the execution of the London Agreement; for the American court does not bow blindly before every act of legislation, but is bound and accustomed to examine its constitutionality. Even the International Military Court, despite the fact that it recognized the London Agreement in principle as law held itself justified on grounds of considerations of international law to refuse to adhere to it insofar as it threatened with punishment crimes against humanity which belonged to the pre-war period.

According to the foregoing, the Kellogg Pact does not come into consideration here. It is, nevertheless, the real

foundation for the IMT Judgment, and for this reason the following points must still be referred to in connection with the present trial:

Kelsen's argument seems to me conclusive, that the Pact to Outlaw War at most only outlawed war as such and not the planning and preparation for war. The acts involved in the "Planning and Preparation of Agressive War", given by Control Council Law No. 10 the status of an independent crime, are consequently not even covered by the Kellogg Pact. Moreover, the IMT Judgment has itself recognized that armament in no way falls under the condemnation of the Kellogg Pact. In the section concerning Schacht, it states:

"But rearmament of itself is not criminal under the Charter. To be a crime against peace, it must be shown that Schacht carried out this rearmament as part of the Nazi plans to wage aggressive wars..... The case against Schacht therefore depends on the inference that Schacht did in fact know of the Nazi aggressive plans".<sup>1)</sup> This is in accordance with the attitude of President Coolidge, who, referring to the military efforts of the United States in the World War, declared, on 10 November 1928, that it was the duty of the United States to itself and that it was in the interests of civilization and of peace in their own country, as well as in the interests of regular and legal relationship to foreign nations, to maintain a commensurate fleet and army. Such a policy of supplementary guarantees was necessary, besides the Pact for the Condemnation of War. The cause of peace would be furthered actively by the Pact and passively through the military armament.

In praise of the Kellogg Pact, Coolidge said that it was

1) In the opinion of the IMT, moreover, Schacht did not achieve any such knowledge, on account of his proved participation in the occupation of Austria and the Sudetenland.

the most complete and would prove the most effective instrument for peace that was ever created, because this Pact recognized "to the fullest extent" the duty of self-defense and did not undertake - because such an undertaking was contrary to human nature - to create an absolute guarantee against war.

Furthermore, the Kellogg Pact did not contain any sanctions against private persons. The political leaders of a people might possibly, in the sense of the order of ideas of the IMT Judgment, be made criminally responsible, but not private persons. This is the weakness in the statements of chief prosecutor Jackson, who proves too much and therefore is unable to carry conviction in anything. Jackson argues in the following manner:

In war people are killed and property destroyed, both crimes in themselves, which however, according to the old conception, lose their illegal character through being committed in war. If, however, it is a question of a forbidden war of aggression, concludes Jackson, then this justification must disappear and the acts of war become nothing more than a number of criminal acts. If that were correct, then every German soldier would be a criminal, liable to punishment for every shot he had fired in the war, and everyone who had taken part in the armament would be an accessory to these crimes. The IMT Judgment itself passed over these arguments in silence, because they would signify an impossible extension of the Kellogg Pact.



Apart from certain war crimes, it is an absolute novum in international law to punish private individuals, a procedure which must raise most serious doubts. International law is a law governing the relations between States; even governments could not hitherto be held responsible as individuals. Even under the laws of warfare, apart from a few exceptions established by the law of usage, an individual who had acted under government orders was able to exonerate himself from a criminal charge. This peculiarity of international law is based on good reasons. How could government function if any citizen could make himself a judge on the political measures taken by his government? Who would protect him if he violated the laws of his country, invoking the provisions of international law? On 29 May 1931, the Supreme Court itself gave this point of view due consideration in the case of Mackintosh. This was a case of a Canadian Professor of Divinity, residing in the United States, who had applied for U. S. citizenship, but was only willing to sign the required loyalty clause under the reservation that he would be entitled to decide for himself whether any war in which the United States might engage was just or unjust within the meaning of the Kellogg Pact, because he could not accept the obligation to take part in a war which he considered unjust. The decision of the Supreme Court of the United States stated that American law, while it recognized the conscientious objector, could not acknowledge the right of a citizen to refuse his moral or armed help to the State, if it were involved in a war which in his opinion was unjust, Mackintosh, therefore, could not reserve to himself the right to make a specific political decision;

This is an ancient problem. It has already been stated by Rousseau, who made the greatest spiritual contribution to modern democracy, that the decision on questions of foreign policy would have to be reserved to the Cabinets, and it is an old English tradition that, in questions of international law, even the law courts obtain the opinion of the Foreign Office and base their judgment on it.

The criminal responsibility of the private person, which must not play any part in the question of the initiation of a war, has likewise no bearing on questions of the waging of war. Here, too, the decisions involved are of a highly political nature and must, of necessity, remain outside the judgment of the individual citizen; and, therefore, this point of view prevails in regard to other counts of the indictment referring to the economic exploitations of occupied countries. The utmost that has been developed by religion and ethics, and not by law, is the so-called right of resistance against certain tyrannies, which, however, has never been a duty.

I now turn to the second count, "Plunder and Spoliation", as well as to the employment of forced labor from the occupied territories.

In comparing the various legal systems, one finds, time and again, confirmation that the legal solutions of certain problems in civilized countries are to a large extent identical, although their basic systems are entirely different and, consequently, the reasons given for these solutions differ from each other to a considerable degree. This phenomenon, which ever and again proves the unity of the civilized world, can equally be applied to other phenomena of social life. It has repeatedly been stated in Nuremberg that during the war respect for international law diminished in all countries and, hand in hand with the lower estimation of international law, which was considered formal and formalistic, there appeared that ideology which, with total war, proclaimed the slogan, "catch as catch can."

The Nuremberg trials remind the German people of the importance of international law, but at the same time - in view of the unstable legal principles on which the conduct of the occupying powers since the capitulation has been based - they produce great confusion and, among many people, even indignation. There exists the feeling that two different standards are being applied, especially in view of the fact that the highest occupational authorities have bluntly stated that the Germans

have no legal protection. Since the capitulation, great discussions have developed on the meaning of the term "unconditional surrender", and the longer these discussions last, the more emphasis is placed upon the indestructibility of fundamental rights, on which also the relationship between the victor and the defeated is based, and upon the inalienable nature of certain minority rights. There is one ray of light in this chaos, i.e. the passage of the IMT Judgment which says:

"These orders, then, prove Doenitz is guilty of a violation of the Protocol. In view of all of the facts proved and in particular of an order of the British Admiralty announced on 8 May 1940, according to which all vessels should be sunk at sight in the Skagerrak, and the answers to interrogatories by Admiral Nimitz stating that unrestricted submarine warfare was carried on in the Pacific Ocean by the United States from the first day that nation entered the war, the sentence of Doenitz is not assessed on the ground of his breaches of the international law of submarine warfare." This sentence states nothing less than that a violation of international law cannot be punished if former enemy countries committed an analogous violation of international law, even if merely towards an ally of Germany. What is the legal significance of such a statement? Obviously, it does not assert that the violations of international law committed by both sides prove the existence of a usage which invalidated the violated international treaty, because it is expressis verbis stated that international law was violated, and the opinion of the Tribunal is laid down as to how proper conduct in accordance with international law could have been observed. On the contrary, it asserts that the objection "tu quoque" is, of course, admissible. This calls for more detailed statements, and clarification becomes most necessary. Shakespeare's well-known quotation from "Measure for Measure", "What know the laws that thieves do pass on thieves?" must, of course, not be interpreted to mean that the poet considered the objection of tu quoque basically irrelevant, because the subsequent



verses prove that Shakespeare assumes that the theft committed by the jurymen who takes part in the trial is not known to anybody, but this is the very prerequisite that is lacking here. It is not fair that judgments simply disregard facts incriminating the enemy States, as was done in the first trial in the case of Russia's attack on Poland, in order not to have to take up the question of the legal consequences resulting therefrom. Nor is it in order that they take the point of view that this question is not a part of the matter under consideration and is not the object of the trial because the indictment concerns Germans only.

In the history of law, the Romans already dealt with the problem of *tu quoque*. They reached the solution that the magistrate who had punished the perpetrator of a crime must, at the request of the perpetrator, permit himself to be tried on the same legal principles on which the perpetrator was punished. Justinian has perpetuated as common law this principle and its application to the judge who passes judgment by including portions of the work of Ulpian and Paulus under the special title of the Digests D 2, 2, 1 and 2, "*quod quisque juris in alterum statuerit ut ipse eodem jure utatur*". This point of view may suffice in a well-developed judicial organization. If today a German judge, who himself buys on the black market, sentences a violator of the consumer law, the principle of justice is being observed, because the perpetrator has the right to report the judge and thus bring about the punishment of the judge. In our case this possibility is lacking, because the organization of international tribunals is still in its initial stages. Therefore, a parallel to the legal reaction which is brought about by the accused raising the objection of *tu quoque* can only be looked for and found in times when judicial systems were still undeveloped, in the middle ages. However, at that time it was a recognized principle, at least where there existed an internal connection between the violations of obligations committed by both parties, that a person had to submit to judicial proceedings only if the claimant himself had fulfilled his own

legal obligation. In Anglo-Saxon law, the principle of clean hands in the law of equity states the same thing as the maxim in the feudal law, "Fidem frangenti fides frangitur". According to Planeck, the leading expert on medieval legal procedure, there existed, at that time, in manifold application, the rule: Whoever does not fulfil his own obligations, has no right to demand justice. These are solutions deeply embedded in law itself and placed on the same level as the principle of equality and the most important sentence in the introduction to the "corpus juris canonici", according to which nobody may do unto others what he does not desire others to do unto him, and even with the biblical postulate: Judge not, that ye be not judged!

It must be admitted that, in an ordinary criminal trial, the defendant has of course not the right to refuse to answer because his judge and his accusers have committed a similar offense. Nevertheless, the idea somewhat recalls French law, insofar as the right exists there in a civil proceeding to reject the judge on the grounds that he is to be a party in a similar lawsuit. In fact, the right of rejection, which exists also in criminal proceedings is indeed nothing more than a refusal to answer before a court so constituted. However, for the way of thought prevalent today, this refusal to answer a charge is certainly more customary in civil law. In a civil lawsuit, the defendant can apply the exceptio doli, if the complainant is obviously not inclined to fulfil his own obligations towards him.

It must now be asserted, however, that international criminal procedure, which is here concerned, possesses in its structure elements which the internal criminal procedure of the State against the accused does not have. The establishment of an offense against international law presupposes the establishment of a violation of international law, and this violation of international law affects first of all and quite certainly the relationship between State and State. Therefore the defendant may, as for instance in the case of reprisals, put forward as

justification the excuse that the State against whose subjects the offense against international law was committed has itself done injury to the subjects of the violator State. The violation of international law thus affects also the clarification of relations between the States involved to each other and insofar contains elements which are present in civil law. It is a question here of the effect of the basic idea of reciprocity, which in the end rests on the fundamental equality of the State. The IMT judgment therefore showed a fine perception when, without further substantiation and excluding the point of view of reprisals, it simply acknowledged the fact that the Allies had committed the same violation of international law as exoneration for the defendant Doenitz.

The decision in the case of Doenitz has moreover a further special significance for the present trial. The acquittal of Doenitz acknowledges that total war was carried on at sea. The same applies to the war in the air. Goering was not indicated before the International Military Tribunal because, as Generalissimo of the German Luftwaffe, he led the detachment of fighter aircraft in the German air offensive against England in 1940, although in this case too violations were committed against the Hague Regulations of Land Warfare.

When in 1919 the Interallied Commission for the Punishment of War Criminals of the first World War wanted to decide on the punishment of Germans for "crimes against humanity", the Americans opposed this desire, pointing out that "crimes against humanity" was too hazy a term.



Instead, they worked out a catalogue of 32 offenses, taken from the Hague Regulations of Land Warfare and the law of the usages of warfare, some of which I name below — a full list is given in my Closing Brief:

Killing of human beings, massacre and systematic terror.

Systematic organization of hunger among the civil population.

Deportation of civilians.

Interning of civilians under inhumane conditions.

Plundering.

Confiscation of property.

Devaluation of currency and issuance of false money.

Wanton desolation and destruction of property values.

Intentional bombarding of open cities.

Unnecessary destruction of buildings and monuments, religious and charitable institutions, as well as the installations for education and art.

Destruction of merchant ships or of ships for the transport of civilians without warning and without necessary measures having been taken for the safety of passengers.

Destruction of fishing boats and lifeboats.

Intentional bombarding of hospitals.

Attacks on and destruction of hospital ships.

Violations of other Red Cross regulations.

Mistreatment of the sick of prisoners of war.

Employment of prisoners of war on prohibited work.

Of this list of crimes against the agreements and customs of military law, the Nuernberg trials did not charge the German defendants with nor make grounds of punishment of all the offenses which constitute so-called total war in the air and at sea. No charge on the grounds of the bombardment of open towns, although in 1940 Goering led the aerial campaign against England, no condemnation of Doenitz on the

grounds of unrestricted U-boat warfare, no charge on the grounds of the destruction of hospitals, etc. I.e. all offenses committed in the war at sea or in the air in the interests of waging total war were not included in the Indictment, because the Allies committed the same offenses.

It is most clearly apparent that total war against Germany was planned and carried through successfully, from the paper of the American Air Commander-in-Chief of SPAATZ in the April number of "Foreign Affairs", 1946. He does not justify the unrestricted bombing of Germany on the grounds that Germany had begun to erase towns in England, but says that the British had intended from the very beginning to bring Germany to her knees with the aid of the Air Force. Owing to lack of means, however, they would not have achieved this alone, and the picture did not change until the Americans, who had been pursuing this strategic policy since the thirties, entered the war. In 1943, in a conference of the Allied Combined Chiefs of Staff in Casablanca, it was decided that unrestricted bombing should be carried out against Germany, its towns and industrial centers, thereby shattering its economy and annihilating the moral resistance of the population.

I quote some sentences from Spaatz's paper:

"Strategic bombing, the new technique of warfare which Germany neglected in her years of triumph, and which Britain and America took care to develop, may be defined as being an independent air campaign, intended to be decisive, and directed against the essential war-making capacity of the enemy."

"British leaders had this strategic concept in mind at the beginning of the war."

"The strategic concept had also been the focus of studies and planning in the United States Army Air Force in 1930's."

"The critical moment in the decision whether or not this should be done came on January 21, 1943. On that date the Combined Chiefs of

Staff finally sanctioned continuance of bombing by day and issued the Casablanca directive which called for the destruction and dislocation of the German military industrial and economic system and the undermining of the morale of the German people to the point where their capacity for armed resistance is fatally weakened. To implement this directive there was drawn up a detailed plan. The Combined Bomber Offensive Plan, which was approved by the Combined Chiefs of Staff, June 10, 1943, and issued to British and American air commanders. Strategic bombing at last had the green light; and it possessed a plan of operations of its own, with an approved order of priorities in targets, to achieve the objectives of the Casablanca directive. That plan called for bombing by night and by day, round the clock.

German statistics give terrible figures witnessing the effectiveness of the bombardment of Germany. Millions of civilians were killed, private property, in particular houses and factories, but also countless cultural monuments, hospitals etc., were destroyed.

If total war made this type of destruction of human life and private property a method of war for both parties, then in my opinion the theory cannot be maintained that the use of the economic potential of the occupied territories by the German Government constitutes a criminal violation of the Hague Rules of Land Warfare.

If a statesman sees that the war potential of his country is attacked by aerial warfare in a manner which cannot be reconciled with the law as we know it, he cannot be blamed on legal grounds for using, in the interests of his war effort, whatever industrial capacity in enemy countries is in his power. The initiation and gradual intensification of that German wartime policy in the occupied territories ran parallel with the increasing use, by the other side, of the methods of total war. The least that can be said is that in accordance with the principles of *tu quoque*, he must be denied the right to pass judgment who has himself waged war upon civilians in such an



unscrupulous manner. I am not discussing the moral aspect of the problem in this connection. Feilchenfeld, whose book I shall later discuss in detail, has formulated the question as follows: Should it be maintained somewhat unrealistically that States might be willing to lose wars by refraining from actions which are absolutely necessary if victory is to be achieved, or should not rather the revival of the old concept of *raison de guerre* be given careful consideration? In the interests of international law the second of these alternatives should in my opinion be turned down, since it would bring great misery upon mankind. In our actual fact, however, the States were inclined to act in accordance with what was called military necessity. What other explanation is there for the order given by Secretary of State Stimson that the first atom bomb be dropped on Hiroshima without previous threat or warning, although it would have been possible to issue either?

But we can leave the moral argument there. What matters in this trial is the legal argument that, aerial warfare and even atom warfare having been waged against Germany and her Allies irrespective of the limitations laid down in international law, Germany herself, let alone the industrialists and business men on the defendants' bench who acted solely in accordance with instructions issued by the government, cannot possibly be brought to justice, by her very enemies, for having committed offenses against military law, which, although they also involved civilians, were in fact far less serious.

The use of civilians for labor is a minus quantity compared to their killing, just as exploitation of foreign plants is a lesser incursion on personal property than their violent destruction by bombing. It is true that the Allies did not make use of these offenses in the same way to wage war as did the Germans. But, as the beginnings of Russian methods of occupation showed in the border states under belligerent occupation, before the German collapse, this was only

because the Allies had no opportunity of so doing, since the course of the war never gave them the opportunity for a lengthy occupation. If one spares a moment's consideration for the conditions which have arisen since the Armistice in the occupied territories, one cannot at any rate say that the exploitation of the economic potential of the occupied territories lies outside the range of their methods.

Against these arguments a major *ad minus* one cannot object either that the seizure of factories and the compulsory employment of civilian labor is an entirely different matter from the effect of bombing, and therefore the conclusion that bombing is permissible is not cogent to the admissibility of the German occupation measures. In naval warfare there is an inner connection between a prize and a sinking, since in both cases property is actually decreased.

The Anglo-Saxons, as in many spheres of their law, still cling here to its older stages and altogether have never really fully adopted the limited conception of war, as defined by Rousseau and developed in the 19th century; it is only necessary to think of their restricted interpretation of Article 23-H of the Hague Rules of Land Warfare on economic warfare, and their treatment of enemy property in general, where the right of confiscation by the Crown still exists.

That the transgressions of international law committed by the Germans were of minor importance, of primarily an economic nature, is revealed by the considerations that the measures employed by the German occupation forces, in whatever legal form they were clothed, could apply only for the duration of the war. That the compulsory employment of forced labor was only a war-time measure is obvious. But even the seizure of a factory is of importance only during the war. There are three possibilities: Either the occupying power which has commandeered the factory wins the war, or it loses it, or the result is a deadlock. If it wins the war, it concludes the peace treaty on the basis of a capitulation and then legalizes its economic measures

through the conclusion of peace. The same applies for the actual treaty peace in the case of a deadlock — or else it loses the war and the factory naturally returns to the possession of the occupied foreign country. Not for nothing does German penal law define theft, and pillage is a form of it, as the seizure of movable property belonging to someone else, since in the case of an immovable object the seizure has a different character from the outset, since the ultimate suspension of the rights of ownership of the person robbed cannot here be realized at all. If in the Hague Agreement one reads of pillage and spoliation, the first thing which actually enters one's mind is a picture of marauding soldiers who seize people's movable possessions from them by force. Anything that disappears in this manner very seldom returns, unless some particularly striking objects such as the Crown Jewels are concerned, the identification of which is particularly simple for obvious reasons. In the case of immobile objects the position is different from the outset. It may be that not all the German authorities thought of the possibility of an unfavorable outcome of the war from Germany's point of view when taking expropriation measures. The business man, on the other hand, makes it his policy to allow for all eventualities in his calculations. For him at least, all transactions were, by their very nature, calculated to be effective for the duration of the war only.

To conclude this court, let us once more examine the book by the American expert on international law, Ernst H. Feilchenfeld, "The International Economic Law of Belligerent Occupation", Washington 1942. The author wrote the book during 1940 and 1941, which is particularly important because his expositions show the view an intelligent contemporary must hold of the continued validity of the Hague Agreement on the basis of the development of national and international law even before the worst experiences of this war.



THE PRESIDENT: Dr. Wahl, would you permit us to interrupt you at this time for our morning recess? The Tribunal will rise.

(A recess was taken.)

(After recess)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: You may continue, Dr. Wahl.

DR. WAHL: I had stopped when dealing with the Feilchenfeld book, "The International Economic Law of Belligerent Occupation", and I said that the author wrote the book in 1940-41, which is particularly important because his expositions show the view an intelligent contemporary must hold of the continued validity of the Hague Agreement on the basis of the development of national and international law even before the experiences of this war.

Even Feilchenfeld cannot make up his mind to declare the Hague Agreement entirely obsolete. He rightly points out, however, that the picture of peacetime economy, the fundamental principles of which the Hague Agreements wanted to maintain even during the war, had, in consequence of the nationalization measures which have come into force since 1918, of the increasing direction of industry, of national confiscations and quasi-confiscations, among which must be numbered foreign currency legislation, undergone profound changes by the time of the outbreak of the second World War in comparison to the liberal times in which the Conventions came into existence. Even the first World War had already revealed the tendency towards total war, which, with its mobilization of the entire civilian population as well as for war work, no longer corresponded to the conception for which Rousseau's limited theory of war, with the separation of civilians and military personnel, was intended. He therefore prefaces his book in Chapter I with a number of general sections, such as "The nineteenth century background of Section III of the Hague Regulations" and "The International Economic Law of Belligerent Occupation under the Impact of State Socialism and Total Warfare" and writes:

"The Hague Regulations assumed a definite kind of normal peace optimum, namely that prevailing in the nineteenth century. Since

then this peacetime optimum has gone up in certain respects, but has gone down in others."

"In modern war, a far higher percentage of civilians, including women, are called on for war work. Whole civilian populations are at least potentially made subject to forced labor for war purposes. Civilians of this kind can hardly be said to be private individuals in the sense in which this term was used when wars were supposed to be fought only by princes and armies. Their work and their wealth are of military relevance. A hostile belligerent may be tempted to treat them as such." (P. 19, No. 75)

"If one considers the treatment now meted out to enemy property and civilians in belligerent countries and in naval warfare, one is driven towards the conclusion that the protection of civilians in occupied regions provided by the Hague Regulations is becoming a limited survival rather than the expression of universal trends and practices." (Page 21, No. 85)

Thus the trained observer could not but be uncertain in his legal conclusions and, in view of the practice of total war now being introduced by the nations on both sides, could not be conscious of wrong-doing if he acquiesced in the instructions and methods of the Government in order to exploit the economic potential of the occupied territories.

Total war has stamped our time as the most inhuman in modern history. The individual is assessed by his Government merely according to his value for the purposes of waging war, and the enemy considers himself justified, because he desires to cripple and destroy the war machine, as the terrible expression is, in also starving and bombing unarmed citizens and even in making low-flying attacks to shoot them down in the streets.

The difference between soldiers and civilians appears to be obliterated. The civilian too, finds his life endangered, or forced



labor makes him little better than a prisoner. The economic efforts of the big modern states, which, even in peacetime are organized in much the same way as a beleaguered fortress, are but a short step to forced labor. Indeed, so nearly have these efforts become the corner stone of their economic charter that when the United Nations Commission on the Rights of Man met in 1947, Russia declared she would have to oppose the prohibition of forced labor and deportation.<sup>1</sup>

The circumstances being such, can it really be said that forced labor and deportation are inhuman war crimes according to the established principles of the law of all civilized nations, if even in peacetime such practices by the State are held to be admissible? But as expounded above, the purpose of the Hague Regulations was to preserve the freedom of the individual and his property in time of peace, as indeed it did so in the happier days when the Hague Convention was drawn up. But let us suppose there are two totalitarian countries, with their highly organized economic systems, and that one of these has been occupied by the other by force of arms. If the Hague Convention is applied literally, then the occupying power would have to make of the occupied territories a paradise where the individual enjoys freedom of person and property, a condition unknown either to the occupying or to the occupied state since the change over to the totalitarian system. This example shows that the methods of the occupying power, which aim at the keeping of peace and order in the occupied territories — one has only to consider the problem of the unemployed in modern times — compel the occupant, by reason of the structural change in peacetime economy, to introduce also in wartime new methods of occupation, which cannot be built on the immovable foundations of the Hague Code. Incidentally, the critics of

<sup>1</sup> See Max Barth "Observations of a European" in the publication "Prisma" (Munich), December Number 1947. Pages 14/15.

the methods of occupation now being applied in Germany very often fail to appreciate sufficiently this point of view, even although after the capitulation other legal principles come into question.

I come now to the crimes against humanity — to a newly established offence under criminal law, the contours of which are only beginning to be outlined. This Court introduces the third main argument — that of the penal responsibility of private individuals under international law.

The fundamentals of the argument were already touched upon when dealing with the question as to whether the Kellogg Pact established the individual responsibility of the citizen, in which connection reference was made to the Mackintosh Case. The idea then enunciated, that the Government of a country loses its freedom of action, if every citizen, in the name of international law, sets himself up as a judge of its political decisions, and at the same time the individual is entirely without protection if he refuses in the name of international law to carry out the orders of his Government, shows the two angles of the argument — the international and the national.

Let us take the international angle first. The Inter-Allied Commission for the Punishment of German War Criminals of the First World War turned down the conception of crimes against humanity as being too vague. When considering the newly established criminal offense, the IMT Judgment exercised extreme reserve — indeed, to all intents and purposes it drew no inferences — because ordinary criminal law and the law governing warfare were deemed sufficient to deal with these crimes.

The lecture given at the Sorbonne by the French Judge-in-Chief at the International Military Tribunal, Professor Donnedieu de Vabre, the highest authority on international criminal law, shortly after his return from Nuernberg, throws light on this point:

He says: "The Tribunal was also mindful of the need to uphold

State autonomy, which is tantamount to the need to apply an undisputed principle. This is shown by the stand taken by him to the Count of the Indictment — Crimes against Humanity — enunciated in the Charter and frequently mentioned in the Indictment. The charge of crimes against humanity is likewise a newly introduced element, insofar as it goes beyond criminal offenses according to law, such as murder, assault — and embraces ill-defined acts which are not punishable according to ordinary law, such as, persecution on political, religious or racial grounds. To bring a charge for acts such as these is to run the risk of opening wide the door to arbitrary action. When Hitler planned to seize the Sudetenland and Danzig, he accused the Czecho-Slovaks and the Poles of crimes against humanity. Such accusations constitute a pretext for interfering in other nations' internal affairs. They detract from their independence. They are a danger to peace.



Lastly, they are alien to international law, as well as to the internal law of most countries. They could only be brought and upheld by violating both the spirit and the letter of the principle establishing what constitutes a crime and a punishment."

But not only the introduction of a new delict is an ex post facto law, but also the holding responsible of individuals, the more so if the right to plead the necessity to carry out a superior order is eliminated. So far, international law has not held private individuals responsible for the misdeeds of the political organs of the State. Thus, according to the rules of traditional international law the punishment of enemy war crimes is not admissible if the deed was not self-motivated, but committed in execution of superior orders; that is if the deed can be imputed not to the individual perpetrator himself, but to the Government of international law, "International Law" Oppenheim (4.A. Mc Hair Edition - 1926. Par. 253) we find this passage: "Violations of rules regarding warfare are war crimes only when committed without an order of the belligerent Government concerned. If members of the armed forces commit violations by order of their Government they are not war criminals, and may not be punished by the enemy. The latter may, however, resort to reprisals".

We also know that the attempts, in the case of violations of the laws of naval warfare, to subject U-boat commanders by way of an international convention to direct liability to punishment under the terms of international law by considering them as pirates being *hostes generis humani*, have been foiled.

The opposite point of view is taken in the Justice case judgment in Nuernberg. The limitation of responsibility to "those who act directly on behalf of the State" as postulated during the IMT by the French Prosecutor de LETHBRON in his speech for the Prosecution on 17 January 1946, is observed no longer. In accordance with the new version any subject of a State is supposed to have committed a crime against international law of whom it can be proved that he "knew or should have known that in matters

of international concern he was guilty of participation in a nationally organized system of injustice and persecution shocking to the moral sense of mankind, and that he knew or should have known that he would be subject to punishment if caught." (Page 32a of the judgment).

The theory is formulated so clearly that we are obviously dealing with a breach of the present provisions of international law, resulting in a recognition of ex post facto law. We do not of course wish to maintain that ordinary crimes should go unpunished, but let the Prosecution charge the defendants with such crimes, and prove them.

It was at any rate one of the provisions of the French proposals submitted to the U.N., which did not, however, gain the majority of votes in the 8th conference for the unification of criminal law, which recommended more incisive measures, that particularly in the case of crimes against humanity, which usually spring largely from national institutions, responsibility be limited to the political leaders concerned, and the executive organs be subject only to the general criminal law.

By so doing the French proposal followed the tradition of international law as formulated for example in the Geneva anti-slavery agreement of 1926. That agreement has been ratified by practically all the nations of the world, including the United States although the latter did reject for their nation in a reservation with reference to article 5, section 2, compulsory and obligatory labor for public purposes is permissible even when it involves change of residence and when no remuneration is paid.

Section 3 of article 5 reads as follows: "It is in every instance the control authority of the territory concerned which shall be responsible for the use of compulsory labor or the obligation to work."

In accordance with the provisions of section 3 the governments alone are to be held responsible under the terms of international law, whereas the individuals concerned are to be relieved of responsibility in accordance with the general principles of international law, as stated in detail above.

With reference to the national problems which arise in connection with

this point of the indictment I would like to start with a personal reminiscence: When one read, prior to 1933, of the atrocities committed during the Russian revolution, or of conditions in Russian forced labor camps, one said: "Thank heavens we're in Germany and not in Russia. In Germany these things would be quite unthinkable."

It may be supposed that similar thoughts come to the minds of American judges when they learn, in the course of the Nuremberg trials, of conditions in German SS camps, and they might say: "In America such things would be quite impossible." If the attempt is to be made to explain why these things could happen in Germany, which every sane German had thought to be absolutely impossible, it should above everything else be pointed out that the German constitution developed in such a way, that it became quite impossible after a certain date to oppose any measures, however criminal, carried out by the State. At the beginning National Socialism scored some resounding successes, especially in combating unemployment, and even skeptics gave it a chance.

The government took advantage of that period of economic recuperation to throw over the whole of Germany a fine net of steel, and to turn the whole machinery of national socialist power, not without reference to foreign examples, into a man-eating Holoach which left the people no choice. When the camouflage wore thin in places, and when perceptive men here and there realized in spite of propaganda that the government would not stop short of crimes, it was too late; and the process repeated itself throughout the land.

But this involves legal problems of extraordinary difficulty. Criminal law as we know it has not been called upon to develop, and has not therefore developed, a system which could have coped with the criminal state (Etat criminal). Was it not true that the State itself had been considered until then as the exponent of legal order and legal progress. But in Germany, unscrupulous positivists have seized power and forced the whole nation to serve their purpose. In a way it is obvious that the terrible conditions which prevailed in German concentration camps called



for expiation under criminal law, and it is natural that in the first flush of indignation against these crimes the limits of complicity laid down in criminal law as we know it were exceeded so as to include everything connected in any way with these crimes.

One might almost say that it is a characteristic feature of crimes against humanity, that a new type of crime is recognized in addition to the actions such as murder, injury etc., recognized as crimes in traditional criminal law, i.e. persecution for reasons of race, politics, or religion, which naturally increases the number of those responsible.

But it is precisely in the totalitarian State criminal that the number of those responsible is thus increased to an inadmissible extent. Everybody who worked in Germany, at the front or at home, even if he was only paying taxes or tilling the soil, played a practical part in furthering the ends of a criminal regime by so doing, and was therefore an accomplice to the crimes committed by the government, provided he was aware of them.

But the IAT judgment has rightly opposed the theory of collective guilt; thus it distinguished clearly, in the case of the SS, between membership of a criminal association, and commission of the actual crimes.

The following is a passage taken from the IAT judgment (Page 113, Nymphenburg edition):

"The Tribunal declares to be criminal within the meaning of the Charter the group composed of those persons who had been officially accepted as members of the SS as enumerated in the preceding paragraph who became or remained members of the organization with knowledge that it was being used for the commission of acts declared criminal by article 6 of the Charter, or who were personally implicated as members of the organization in the commission of such crimes, excluding, however, those who were drafted into membership by the State in such a way as to give them no choice in the matter, and who had committed no such crimes."

That quotation also involves the second point of view by which responsibility under the terms of criminal law was limited: The use of the concept of the state of emergency. If the SS man had no choice but

to join the SS, he is not liable to punishment because he was a member of the SS, even if he was aware of the crimes committed by the SS, provided only he had committed no such crimes himself. But that formulation does not, of course, mean that the excuse of the state of emergency shall not apply to such other acts as he may have committed because he had been forced to join the SS. Whether the unlawful order as such is accepted as an excuse or not, the pressure thus brought to bear upon the person concerned ("Zwangssituation") is negligible. In the normal state, the subject can usually complain against an unlawful order, and higher authority will right the injustice. No such possibility exists in the Etat criminal. He who would complain courts selfdestruction, or at least dire peril for himself and his family, in accordance with the principle of collective responsibility of the family. There is nevertheless some point in the ruling of the London Charter with regard to the defendants in the first trial who were all leading personalities of the State, that the order be considered as an extenuating circumstance, but not as exempting from punishment. Such men have better chances of protecting themselves in an emergency than have ordinary private citizens. That is why the concept of the state of emergency was largely used in exoneration of the defendants in the first trial in which ordinary private individuals were concerned, the Flick trial. I should like to refer you to the lengthy quotation contained in my closing letter, which shows that it is simply inadmissible to ignore the fact that the individual is inextricably trammelled in the meshes of the State, or to postulate from the point of view of international law that the individual be liable to punishment as an accomplice to the crimes committed by the totalitarian State.

To come now to the defendants themselves; each one of them has submitted proof that during his whole life he has striven to bring about human progress in the fields of social welfare, industry, medicine and civilization and the many humane actions testify that each one persisted in this way of thinking throughout the Hitler period. To cite only one example among many, let us recall here the questions of personnel policy which arose as a

result of the government measures for eliminating Jews from the industrial life of Germany. These men are now charged with having employed forced labor, prisoners-of-war, concentration camp inmates, and for the treatment meted out to them.

How did these men come under the shadow of crime; how is it at all possible that such suspicion could come to rest on them?

The circumstances set out in the foregoing give the answer. To understand the behavior of the defendants one must think back to the conditions which prevailed at the time. I will endeavor to explain their subjective position, that is, their motives. In so doing, I will take the attitude typical of the German intellectual, who at heart was not interested in politics, to whom the National Socialist Movement was a natural phenomenon, and who at first failed to understand fully the dead seriousness of this ideology, having formed the mainspring for his intellectual life in very different times. The preoccupation of the individual with his more or less restricted specialized sphere of activity drew him, at first gradually, then in an increasing measure, into the set-up of the State and the Party, in which he could rest satisfied that the work in his particular sector was progressing. Naturally, he was not unperturbed by certain concomitant circumstances of the totalitarian state, but at first he conceived these to be merely teething troubles, and hoped that the phase would pass.

Others too, told themselves that one must put up with these inconveniences; the main thing was to stem the onrush of Bolshevism against Europe, and history shows that the only way to fight an enemy armed with new weapons is to use his own methods. Only by adopting many of the ideas and measures of revolutionary France was Prussia able, after the defeat in 1806, to find the strength to play a decisive part in the overthrow of Napoleon.

It was not until the war had broken out that the individual came to perceive that these secondary phenomena occupied the centre of the scene, and realized the brutality and cruelty of this State, although for most



people the extent of the enormity remained concealed until the end.

Thus, to an ever-increasing extent did the fear of coming into conflict with the State, or of being destroyed together with one's family as a saboteur, a defector, or an ideological opponent, become the underlying motive of his behavior. The closer he came into contact with the cruelties of the system, the more this fear grew. Hitler well knew the aversion of the ordinary German to his methods, and used every kind of threat to compel the people to bend to his will.

Notwithstanding, it would be incorrect to say that these men behaved in this manner solely from fear. The intellectual is wont to render to himself a minute account of his position and of the motives for his behavior. Every one of us has lived through hours under the past regime when naked fear excluded all else. But with the return of a measure of calm, this gave way to other thoughts. The defendants too experienced the same thing. They too reasoned in a way that appeared to justify their conduct even from an objective angle. It must be left to the psychologists to decide to what extent this rationalizing was merely the result of inhibitions. Be that as it may, even in retrospect, some of these considerations must be construed as cogent reasons, contributing to produce a situation which must be regarded as a genuine case of a conflict of loyalties.

1) First the national problem: should one commit acts of sabotage even at the risk of exposing one's people to defeat in this struggle for life and death, one's people whose sense of discipline and spirit of self-sacrifice are already strained to breaking point? One must have experienced the tragic inner conflict of the man who, torn between love of his people and his fatherland and the desire to have done with the criminal tyranny of Nazism, sought in vain for a practicable solution. His children were serving at the Front. Could he fail in his duty? For even as late as 20 July 1944, the belief was still widely held among the intelligentsia, that the Generals would succeed in overthrowing Hitler and bringing the war to a close while still avoiding total defeat.

2) Each one of these men was entrusted with grave responsibilities, not only towards the foreign conscript workers, concentration camp inmates and prisoners of war, but also towards the free workers, who, in fact, formed the greater part of the staff, to say nothing of the remainder of Germany proper, of science, the churches, and that section of the Press which, in spite of everything, had retained a certain freedom of its own — the help and support of Farben was of importance to them all. Could one be justified in forsaking them?

3) If the defendants had, in fact, withdrawn from the scene of the crime and had gone to the front or taken up other work, they would have had to admit to themselves that they would be continuing to serve the state criminal, further removed from the source of the crimes, it is true, but serving its purpose none the less effectively, and, moreover, without having taken any practical or effective step towards preventing the commission of the crimes, since their successors would be forced to act in precisely the way in which they themselves would have acted.

4) Yes, the defendants were justified in saying that they fulfilled a higher duty in remaining at their posts in order to oppose the evil, in so far as this was within their power, and to strengthen the good, than in escaping from their responsibility, thus leaving the field open to an unscrupulous successor who would have served the Regime well. When one considers that throughout Europe, the I.G. of all firms, enjoyed a reputation as one of the leading enterprises in the sphere of social welfare work, it is impossible to exaggerate the importance of the danger of such a deterioration in conditions, a deterioration which, moreover, is said to have affected primarily the foreign conscript workers and the concentration camp inmates. There have been cases enough in which boards of management, through having a single Nazi fanatic planted in their midst, have found themselves frustrated in every effort to counteract Party aims and methods.

Thus, in addition to the state of emergency in which the defendants found themselves, there was the conflict of duties to which the Court might

give nature consideration. The outside observer's first impression might well be that of indifference towards the baseness of the SS State. The truth of the matter is quite the contrary. The situation was unique: the terrible pressure exerted as a means of compelling complicity in the achievement of the most dreadful aims of the State and which reflected not the slightest sign of horror at the elimination of all that was best, left no choice, more especially as it was possible in this way and in this way alone to achieve at least some considerable measure of success in lessening the evil, with the result that it was precisely the men who was conscious of his responsibilities and who thought less of his own danger than of his moral obligations, who felt compelled to follow the path chosen by the defendants. The problem resolves itself into the question of whether or not one looks upon the defendants as men of honor who could be relied upon in time of stress, to follow the path dictated by their conscience.

Closer study of the crime has revealed these depths of the problem which go behind the mere text of the law, the depths of a problem which, under the reading of the choice of minus minus, moral theology has for centuries dealt with, stating, that it is permissible to create the external conditions constituting a criminal action, if in this way, a worse evil is prevented.

Professor Helmuth von HEBER, Professor of Penal Law at Bonn, writes in the "Monatsschrift fuer Deutsches Recht", year 2, Volume 2, February 1948:

"The Nurnberg verdict expresses astonishment, nay indignation at the objection raised by the defendants on the grounds that they had acted on higher orders, and accuses them of duplicity, not to say, dishonesty. "Many of these men", so runs the verdict, "have made a mockery of the soldier's oath of obedience to military orders. If it is mere advantageous for their defense, they say they were forced to obey orders; if one reproaches them with Hitler's crimes, having established the fact that these were a matter of general knowledge, they say they refused to



obey orders." And yet this conduct can be soundly justified not only on ethical but also on legal grounds, the basis of the conduct being one which can readily be acknowledged by the man who places himself in the position of the recipient of the orders. Let us assume that his first reaction is to resolve, regardless of personal danger, to refuse to carry out the order. He then reflects on the consequence of such an action and becomes convinced - and rightly so - that someone else who will obey the order without further ado, will replace him in the position which he vacates. He now resolves to remain at his post: if he cannot prevent the execution of the order, he can at least lessen its effects and limit the amount of harm done by it. In other words, the conflict of duties, given the choice between two evils, the lesser, involving active co-operation, and the greater, involving merely passive acquiescence, resolves itself by choosing the lesser of the evils. It is true to say of this case also that there is no choice which admits of the complete avoidance of wrong; the recipient of the orders has only the choice between two evils, and his choice of the lesser can be no grounds for reproach." It is stated elsewhere that, in given circumstances, one must recognize "that the greater moral courage is often required to remain at one's post and to co-operate in the execution of orders, while striving to restrict the effect of such orders, and that much harm was prevented by such conduct on the part of men of principle under National Socialist domination. Legal opinion must not be allowed to overlook this fact. Moreover we must refrain from raising the objection that this evil could have been completely eliminated had all subordinate officials refused to obey orders. We are not concerned here with the collective guilt of an entire class, but with the criminal liability of the individual, and the judgment of such criminal liability must accept as its starting point the fact that the possibility of unanimous refusal to obey orders on the part of any one class would have been a mere illusion."

A few further words on the subject of Conspiracy: In my Closing Brief, I have presented evidence in proof of the fact that in former times, it was

the continental concept of a "Komplot" which corresponded to the Anglo-Saxon concept of conspiracy, but that this had disappeared from the books of penal law in the middle of the last century, as the mass judgment of conspirators, the basing of judgment on assumptions of guilt which it is more or less impossible to refute is no longer in keeping with the demands of our present legal system, namely that the individual be held responsible for any contribution which he has knowingly made to the commission of a crime.

The recognition of the crime of conspiracy therefore contradicts the recognized principles of the civilized nations.

For the rest, the most recent investigations conducted by the Americans to establish the stage of advancement of the German armaments program at the outbreak of the war, investigations of which I have spoken in detail in my Closing brief, have shown indisputably that Hitler's preparations were totally inadequate for the conduct of a war, and that for precisely this reason, the expert could not but look upon aggressive war as an act of madness. From this it is clear that, in contrast to the factors constituting guilt under the legal provisions governing conspiracy, nothing could have been further from the thoughts of the defendants than that Hitler was planning a war of aggression.

Your Honors,

In view of the time limit imposed by the Court, I am forced to come to a close. The development of the totalitarian states, was, in itself, the widely recognized expression of the inherent crisis of justice. The legal ground on which humanity stands is still in an upheaval today. Our present need is for judges who, far from dealing yet a further and more overwhelming blow to the already shaken ideals of our legal tradition, will re-establish them so that they may become strong pillars in the building of a better world. Failing this, a cynical nihilism, bringing in its train we know not what unpredictable consequences, would fall to the lot of the German race and the Western World would have failed in its great opportunity.

Though compelled by lack of time to refrain from pointing out the many ways in which they apply to the present proceedings, I should like to add two quotations.

The first is by our poet Franz Grillparzer, the second by your Abraham Lincoln:

"Just to oneself and other men to be - this is the hardest task in all the earth - No justice knows is monarch of this world."

"Fellow Citizens, we cannot escape history, we of this Congress and of this administration will be remembered in spite of ourselves. No personal significance or insignificance can spare one or another of us. The fiery trials, through which we pass will light us, in honor or dishonor to the latest generation."

THE PRESIDENT: The Tribunal recognizes Dr. Boeltchan.

DR. BOELTCHAN: (for the Defendant Krauch):



We have come to the end of a trial the type and extent of which may be characterized as unique. By submitting 6,545 documents, in more than 15,000 pages of transcript, on 140 days in session, by hearing 188 witnesses, we have struggled to get at the bottom of things. Not it is time to complete the fact finding, with an energy equalled only by the seriousness of the matter and the dignity of the court, and also for the defense to contribute a share in the legal findings and - as was once stated in this trial - thereby to help in coming "out of the woods onto the highway."

What then is the result?

It is characteristic of this trial that the case-in-chief of the defense begins with an opening statement. By this the defense has become obliged to correlate the results of its case-in-chief with this opening statement and to answer the question which worries the defense day and night: Was not too much said, too much promised in the opening statement? Did we succeed in the case-in-chief in fulfilling the claims made in the opening statement? Dr. Krauch, before this court, submitted to direct examination and before the prosecution to cross examination. Did he measure up, face to face? Within the time limits set by the tribunal, which may be explained by the special circumstances of this trial, my final plea gives only a blueprint, if I may characterize it with a German expression often chosen for scientific works, thus the broad outlines, in which the defense of Dr. Krauch sees his case.

All the details are laid down in the Closing Brief, which has been drawn up in such a manner as to allow the tribunal to obtain information quickly whenever it desires to be instructed regarding any one point of the views presented by the defense on the individual questions.

In this final plea, we have dispensed with introducing quotations from the documents and the transcript. My final plea has been submitted in writing; in it, reference is made to every problem dealt with in text figures (T2) in my closing Brief, in which - in accordance with the suggestion of the tribunal in the session of 13 April 1948 - the

incriminating evidence is placed opposite to the exonerating evidence. The notes refer to the marginal notes of the Closing Brief, which are to be found on the left hand margin of the individual pages of this Closing Brief.

In order that the notes may also appear in the record, I request that my written final plea be taken into the record.

I. Count I of the indictment: participation in preparation for aggressive warfare.

1.) The IMT judgment forms the basis of the theory of the defense on the question of participating in the preparation for aggressive warfare. According to it, the state of mind requires the knowledge of Hitler's aims. For Krauch, this knowledge could come from his participation in the 4 known secret sessions or from other sources. For both, the prosecution failed to submit any proof. That Dr. Krauch had no close connection with Hitler has been proved. He spoke to him only once, and not until May 1944 on the occasion of the well-known session, <sup>1)</sup> dealt with in the case-in-chief.

Moreover, I refer to the statements of Herr Dr. von Metzler, who treated the application of the principles of the IMT judgment to this case in detail for all defense counsels in the petition of 17 December 1947, and who will once more make a statement regarding this in his final plea.

As a substitute, poor, like every substitute, for the lack of close contact with Hitler and his intimate circle, the prosecution made the claim that Dr. Krauch was "Goering's right hand." obviously with the intention of inferring Dr. Krauch's confidential knowledge of Hitler's plans for aggression from this designation. But even this interpretation is not proved; indeed, it is even refuted in the case-in-chief of the defense. Dr. Krauch was so far removed from being one of Goering's confidants that

---

1) T3. 1-5, 6.

he saw Goering only about twice a year and Goering refuted to him any possibility of a war in July of 1939. A number of witnesses from the circle around Goering, I should like to refer to Milch and Goernert, confirmed the statements of Dr. Krauch.<sup>1)</sup> Dr. Krauch could also not have been one of the initiated for one particular reason, which is the fact that from the outset the judgment of Dr. Krauch by the authoritative Party circles precludes any possibility of Dr. Krauch's knowledge of Hitler's plans. To be sure, the Party recognized Dr. Krauch's great technical ability without reservation, but politically it regarded him with extreme distrust. Abundant proof of these facts has been submitted.<sup>2)</sup> The cause for this distrust was Dr. Krauch's own attitude with regard to the National Socialist ideology and the wishes of the Party, particularly his attitude with regard to Jews, the church and science. This distrust regarding Dr. Krauch extended to all of I.G. Farben, which on its part, under the management of Krauch and Schmitz, refused, as has been proved, to concede the Party the influence in the Vorstand and Aufsichtsrat which it so very much desired to attain. How far this distrust went is shown by the measure taken during the war, prohibiting Dr. Krauch from being informed about the atomic experiments.

As contrasted with these basic facts, the references of the prosecution to numerous details fail to prove anything. No matter how many facets they have, the fact that Dr. Krauch had no knowledge of Hitler's plans for aggression cannot be argued away. Thus, no proof of any sort is furnished by the reference to the participation in the large meetings in December 1936 and October 1938, when many German industrialists were assembled around Goering and Hitler in order to receive the views of the national leadership concerning the situation.<sup>3)</sup> Furthermore, no proof

---

1) TZ 7

2) TZ 8, 9.

3) TZ 11, 12.



is furnished by the reference to Hitler's confidential memorandum about the Four Year Plan, which besides the fact that it does not disclose any intentions of aggression in its contents, did not become known to Dr. Krauch until he was in Nurnberg.<sup>1)</sup> This and many other things are details, which indeed show a knowledge of the rearmament and its promotion which Dr. Krauch himself does not contest, but which do not prove anything about his knowledge of Hitler's intentions of aggression.<sup>2)</sup> Along with millions of other Germans, Dr. Krauch saw in the rearmament a means of meeting a threat of aggression from the East, and this interpretation was based on the political situation. For example, every sixth German did vote communist in 1932 and all the propaganda until August 1939 was directed at the Communist menace. I recall the statement of Hitler's radio commentator, Hans Fritzsche, acquitted by the IMT, by concluding witness on the question of common knowledge of the German people of Hitler's plans of aggression. I recall the speeches of Hitler submitted in the volumes on German foreign policy. Through them all like a red thread runs the profession of love of peace and preparedness for peace and from 1936 on, the Bolshevik danger is represented as the thing against which a dam must be erected.<sup>2a)</sup> How right Hitler was in this outline of his policy, by the way, might be confirmed by the political situation which has developed in recent months in Europe.

How lightly the prosecution takes things here, however, as in so many other points, is shown by a claim in Trial Brief, Part I, page 26: Dr. Krauch must have concluded from the fact that the armament of Germany in 1938 had exceeded that of the neighboring nations, that Hitler was arming for an aggressive war. This interpretation of the prosecution amounts to the following, i.e. if the armament of a country has exceeded a certain limit then this nation is planning an aggressive war. The erroneous nature of this interpretation is apparent; if it were right it

1) TZ 13.

2) TZ 16.

2a) TZ 16.

would have very strange consequences. Numerous German scientists have been obliged to work in the War Department on the basis of agreements. Dr. Krauch also received an inquiry from the War Department with regard to this. From the standpoint of the prosecution, one would have to advise these scientists and also Dr. Krauch first to have Mr. Srecher give them exactly the ultimate limits of armament, upon reaching which, they must put a halt to their further activities, in order to escape the danger of being indicted.

Moreover, the prosecution still has to prove that Dr. Krauch was informed as to the extent of armament of the neighboring nations; in addition to this, however, the defense has proved that numerous experts were of the opinion that the German armament program was insufficient.<sup>1)</sup> I refer here only to the testimony of the witness Huenermann, the chief of Staff of the Military economy and Armament office, whose statement came at the close of my case-in-chief. I refer furthermore to Vol. 3 of the Documents on German Foreign Policy where I have compiled the statements of 12 Generals and which could be summarized to that effect.

All of these documents have one thing in common: the decisions which originated in Hitler's brain were not known even to the highest military leaders until the last minute. And it is important for the question of good faith in the statements of the Reich Government that the national Wehrmacht was expressly characterized as a particular instrument of defense and always as an armed force for the preservation of peace. It seems curious in this connection that according to the prosecutions Trial-Brief Part I, page 84, Hitler should have succeeded in deceiving even Poland, that is, the country which was most threatened, regarding his aggressive intentions, while Dr. Krauch, of all people, should have perceived the deception. Beyond all this, the defense then - although after the irresolute case-in-chief of the prosecution it would have been superfluous to do so - began a counter-attack, - they themselves now fitting

1) TZ 17.

together the pieces of a mosaic picture - by demonstrating that a large number of actions by Dr. Krauch were in no way compatible with the object attributed to Dr. Krauch by prosecution of taking part in aggressive wars.<sup>1)</sup> Let me cite a few of these actions briefly: Dr. Krauch acted as technical adviser on the construction of the installations under his supervision from a commercial, not from a military point of view. What results this had for the conduct of the war has been shown by the result of the air raids on the petroleum plants, Buna plants etc. Iso-octane, important for the development of high-test aviation gasoline was made available to foreign countries before 1939, while in Germany its production was not begun until after the war had started. Finally, the exchange of experience<sup>2)</sup> with foreign countries belongs in this category, in particular with Standard Oil in the field of hydrogenation. I wish to draw the attention of the Tribunal particularly to the affidavits of two men, Haslam and Howard, who occupy leading positions in the Standard Oil, from among the extensive amount of evidence covering this field. This evidence completely refutes the claim of paragraph 50 ff of the indictment.

2.) Now, beyond the documentary material, Dr. Krauch's knowledge and intent to take part in the preparation of aggressive wars has been concluded from his position in the office for the direction of industry (Amtliche Wirtschaftsorganisation). The importance of this position was inordinately exaggerated by the prosecution. The prosecution has been more than presumption. The prosecution has been more than presumptuous, as in so many of its claims, in comparing Dr. Krauch to Schacht and brought forward as an incriminating fact that he did not immediately, like Schacht, resign from his position after he, just as Schacht, had become aware of Hitler's aggressive intentions.<sup>3)</sup> How wide off the mark falls this comparison.

---

1) TZ 23 - 34.  
2) TZ 30.  
3) TZ 18.



The claim that Schacht had recognized Hitler's aggressive plans as such is also misleading. The IMT judgment explicitly stated the contrary. Dr. Krauch, however, rightly called further attention to the fact that his position could not be compared at all to that of Schacht. As Minister, Schacht was a member of the Reich Cabinet. Schacht was President of the Reichsbank and Reich Minister of Economics. In his hand, the financing of the entire armament program was coordinated. Dr. Krauch on the other hand, did not hold a position even remotely resembling that of Schacht. By no means did he have knowledge of the entire armament program, not even a part of it, not even the entire chemical sector, but only that of the five special chemical problems.

But Dr. Krauch may also not be compared with any other of the persons sentenced by the Nurnberg IMT. All were supreme functionaries of the National Socialist regime, all were particularly characterized by the confidence of Adolf Hitler.

Sauckel too, was a plenipotentiary general, but Sauckel was at the top, his office was a supreme Reich authority; Krauch was not a supreme Reich authority either in his capacity as general plenipotentiary for Special Question of Chemical Production or as provisional director of the Reich Office for Economic Development. <sup>10a)</sup> Sauckel "directed" the allocation of many millions of workers; Krauch did not direct, but merely "acted" as technical consultant and that regarding the need for workers for the construction sites entrusted to him. It is not a question of the appearance, of the designation, but of the reality of the authority, and in this connection Dr. Krauch made clear his authority by his description with the aid of numerous documents submitted by the Prosecution itself, which show his dependence on the decisions and absolute power of other offices, far outranking his. <sup>10b)</sup> It was indeed a characteristic

10a) TZ 50

10b) TZ 47, 48

of the Third Reich in general: to govern with many authorities overlapping, coinciding and holding a subordinate position. Dr. Ambros put forth the best proof of this, when he demonstrated to us in a diagram how almost innumerable official offices took part in the construction of Auschwitz, consenting, recommending, advising, interfering. In this connection we should also refer to the judgment of Military Tribunal II in Case IV against Pohl, where it states on page 8079 of the English transcript:

"At the outset of the testimony, the Tribunal realized the necessity of guarding against assuming criminality, or even culpable responsibility, solely from the official titles which the several defendants held .....

The Tribunal has been especially careful to discover and analyze the actual power and authority of the several defendants, and the manner and extent to which they were exercised, without permitting itself to be unduly impressed by the official designations on letter-heads or office doors."

In connection with portraying the character of other defendants, the Prosecution also attributed selfish and ambitious motives to Dr. Krauch in taking over his position, and on the basis of these motives cast aspersions on the whole of I.G. Farben. The defense is of the opinion that here too they have established clarity and have unearthed the real motives. Ambition, selfishness, ideas of Military aggression were not the motives which led Dr. Krauch to follow the call which had its origin in Goering's initiative, not in that of I.G. Farben, but rather worry about the further development of industry and science, their protection against unpleasant Party influences and worry about finding workers. All this according to discussions with the then chairman of the Aufsichtsrat of I. G. Farben, Bosch, whose commanding personality and anti-Fascist attitude has been presented in detail to the Tribunal. Dr. Krauch correctly called attention to the fact that it was not unusual for an industrialist to step into an honorary government position, and I need only to mention the phrase "one dollar man" in order to convey to the Tribunal an idea of the circumstances which had an influence upon Krauch's

10c) English transcript page 7873, German transcript page 7949.  
11 ) TZ 41  
12 ) TZ 41

decision.<sup>13)</sup> As the case-in-chief has shown, Dr. Krauch was only an adviser and expert in all his positions, without his own initiative, without authority to make his own decisions. The thesis is propounded, not from cowardly fear of the judgment, hoping to minimize Krauch's position and activities contrary to the facts, but because it alone corresponds to the hard facts corroborated by the case-in-chief. From a large number of prosecution exhibits, Dr. Krauch listed a number of points, in his direct examination, which clearly demonstrate the lack of any independent power of decision and the fact of his dependence on the decisions of the offices above him.<sup>14)</sup> The theory put forth above, that Dr. Krauch cannot be guilty of participation in the preparation for aggressive wars on the basis of his position and activities, also agrees with the judgments pronounced by the other Nurnberg Tribunals.

Military Tribunal V in Case VII, English transcript pages 10, 491-10, 503, acquitted the two Chiefs of Staff, General Foertsch and General von Goitner, stating that they were only advisers to the commander in chief and had had no power of command of their own. Their knowledge of the existence of illegal actions did not fulfill the requirements of penal law. For this purpose, a person who orders, approves or becomes party to the crime by his consent, is required. Since Krauch as well, as his defense has proved, was active not in a decisive but only in an advisory capacity the establishment of his innocence is justified by applying the above-mentioned legal principles. This also applies, moreover, to the accusations made in the other counts of the indictment, since there too, Krauch was always active only as an expert in an advisory capacity.<sup>14a)</sup>

3.) So much for the position of Dr. Krauch himself. Now a few words regarding the activities which he pursued as general plenipotentiary for Special Questions of Chemical Production and in the Reich Office for Economic Development. Through the description of Dr. Krauch and other

-----  
13) TZ 41  
14) TZ 42-48  
14a) TZ 39



defendants - above I mean Dr. ter Meer, Dr. Schneider, - it has been made clear that the activity in the field of synthesis was nothing new from 1933 on, but went back to deliberations, work and preparation which took place long before that year.<sup>15)</sup> The prosecution makes the fundamental mistake of seeing the Four Year Plan only from the point of view of plans for an aggressive war.<sup>16)</sup> Certainly, the Four Year Plan played a part in the rearmament program, but its most outstanding motives were employment, saving of foreign exchange, the achievement of an extensive autarchy, and in addition to matters which were also essential to the rearmament program, those of the Civilian Sector played an outstanding role. This aspect of the Four Year Plan has been confirmed not only by a number of witnesses but by the defendants themselves. There are also documents which testify to this, and in particular, contrary to the thesis of the prosecution, Hitler's confidential memorandum regarding the Four Year Plan constitutes no proof for aggressive plans, as a glance at this document itself proves.<sup>17)</sup>

Now, as regards the occupation with petroleum, Buna, nitrogen, etc., in this connection may I only call to mind the idea of the so-called armament materials common to the trade.<sup>18)</sup> It is known to come from the United States, and it is the fundamental error of the prosecution that it has seen the production of that type of armament goods common to the trade, i.e., those which are important for peace as well as for war, only from the point of view of the preparation for an aggressive war. Innumerable completely false conclusions of the prosecution have been built on this fundamental error.

In this connection, a word about the hoarding of supplies, which the prosecution also regards only from the point of view of preparation for an aggressive war, should be spoken. As regards Dr. Krauch himself, I would like to state here that Dr. Krauch had no right in his official position to order or direct stock piling. Moreover, reference should also be made here to the practice in other countries, and finally, the attention of the

15) TZ 55, 56, 57

16) TZ 54

17) TZ 54a

18) TZ 55

Tribunal should be called to the fact that at the outbreak of the war, the amount of supplies available was such as to prove the insufficient state of armament for war. If there was only a fifteen day supply of Buna and a six month fuel supply, and powder and explosives as well, only in relatively small quantities — all this has been proved by witnesses — the inference of the prosecution is thus refuted in this point as in all the others.<sup>19)</sup>

What was true of the Four Year Plan is true also of the Karinhall and the Rapid Plan. The prosecution presents matters in such a light as to make both plans seem like something completely new, originating in the evil intent of Krauch. In this connection, again documents submitted by the prosecution itself, prove that they were only a compilation of planning for required production drawn up else where, of which Dr. Krauch did not even know until then, and that the development of the products compiled in the Karinhall Plan was to take place in peace time.<sup>20)</sup> The same applies to the Rapid Plan, which the experts Dr. Bhmann, Dr. Zahn, et al., among others have described to us as merely the compilation of the developments planned by the GHI even before June 1938.<sup>21)</sup> Referring to these plans, the prosecution speaks of Dr. Krauch's cooperation in the "planning".<sup>22)</sup> This mode of expression is inexact and unclear. In German usage, a sharp distinction must be made between:

- a) Planning for required production, thus planning to cover a definite need for gasoline, Buna, powder, explosives, etc., for definite purposes. This planning for required production was never Dr. Krauch's affair, but rather the affair of the Reich Ministry of Economics, the Army Ordnance Office and the Ministry for Armaments and War Production, etc.
- b) Subordinate to this in point of time and subject matter, and after the planning of required production comes the planning of construc-

-----  
19) TZ 60  
20) TZ 61  
21) TZ 62  
22) TZ 44-45

tion for the factories which are to meet the requirements ascertained in accordance with a). It includes the expert advice regarding the necessary construction material, machines, the best mode of work, the number and type of workers, etc. Krauch was employed only within the scope of this construction planning, as an expert and an adviser.

4.) Krauch's position and activities in I.G. Farben.

Dr. Krauch had already discontinued his activities as member of the Vorstand<sup>1</sup> apart from certain duties in the process of transfer to his deputy - by April of 1936. The directing of Sparte I was transferred to Dr. Schneider as an acting deputy in 1936 and wholly in 1939. This conduct of Krauch originated in his integrity; he wanted to avoid under all circumstances being involved in a conflict of interests in the performance of the duties of his honorary position and possible wishes of I.G. Farben.



In his honorary position he was not the spokesman of the interests of an individual plant, but he had to take care of the interests of the entire chemical industry of the Gebechem-Sector (General plenipotentiary for special questions of chemical production). This attitude of KRAUCH was established beyond a doubt by the testimonies of the other defendants; especially precise is Dr. ter MEER's statement in that respect:

"In these years I repeatedly heard complaints from younger associates that Dr. KRAUCH had made decisions in the interest of competitors and not in Farben's interest. Therefore I can confirm from this and from my own observations, that Dr. KRAUCH strictly observed the separation between his official business on the one hand and his position in Farben, which was only on paper, on the other hand." 23a)

However also other witnesses, as for instance General von HANHEIMEN and Dr. SCHIEBER, confirmed Dr. KRAUCH's clear observation of the separation line and his correct attitude. 23b) Therewith, however, also the assertion of the prosecution is refuted which claimed that Farben rushed to take part in the Four Year Plan and Farben entered a kind of alliance for the pursuit of selfish interests. 24) The last doubts in that respect surely were dispersed by the reading of the Basic Information of the Defense by Attorney-at-law SILCHER, in which it is stated beyond any doubt, that Farben did not gain any profits out of the Four Year Plan.

The Prosecution put forward as a detail of its charge the phantastic figure, that 90% of the personnel of Dr. KRAUCH's office were employees of the Farben. The defense reduced this phantastic claim to the correct figure of approximately not over 30%. The defense likewise explained why this in itself insignificant number of employees of the Farben was necessary. 25.)

Dr. KRAUCH demonstrated the same attitude of decency in his

---

23) German transcript page 6918  
English " " 6793/94  
23b) TZ 63  
24) TZ 65, 66  
25) TZ 65

capacity as a member of the Aufsichtsrat as he had shown as a member of the Vorstand; From 1940 until 1945 he did not actually exercise his functions as a member of the Aufsichtsrat, a fact which was also proved by the case in chief 26). Apart from this fact, it has to be pointed out that legally speaking, members of an Aufsichtsrat consisting of twenty people cannot be made individually responsible for crimes committed by the Vorstand, because according to German law, neither the Aufsichtsrat as an entity nor the individual members were authorized to issue orders to the Vorstand. If the presentation would advocate a different opinion than it would not have indicted KRAUCH alone, but all members of the Aufsichtsrat as well.

Again I may be allowed to shed some light on the material which the prosecution has built up with reference to the activity of Dr. KRAUCH in the I. G. The establishing of the Vermittlungsstelle W (V/W), upon which the prosecution dwelled so extensively, has been reduced to its proper proportions already during the case in chief of the prosecution.

The Vermittlungsstelle-W was, as testified by a witness of the prosecution in the early stages of this trial, a kind of glorified letter-carrier and not a sinister organization for active espionage, 28) which were dealt with in this connection, find a natural explanation in the fact of Germany's endangered situation and the mobilization plans 29), war games (Planspiele) 30), and all the other small matters, as for instance the establishment of the department Counter-Intelligence, 31) which the prosecution mentioned in this connection, were only carried out upon orders of the authorities and were considered as annoying interfering with normal business routine. Referring to all this, I have

- 
- 26) TZ 67
  - 27) TZ 68
  - 28) TZ 71
  - 29) TZ 70
  - 30) TZ 72
  - 31) TZ 69

to harp again on the old subject: i.e. did not other countries and other people act in the same way? Replace IC by ICI (imperial chemical industries for England, or Dupont for America, Montecatini for Italy and at once the similarity will become clear to you. Is it not just a little naive, when the prosecution introduces in this connection exhibit No. 922, which contains a summary report compiled by the Vermittlungsstelle-W concerning British "shadow factories"? It could be pointed out in this connection that this summary was made up from the material published in English newspapers, to which everybody in Germany had access. The reason for the special secrecy rules and the utilization of the Vermittlungsstelle-W in this connection was explained quite clearly by the defendant von KRIEGER, as necessitated by the more severe regulations concerning high treason etc.

5). Participation in the waging of aggressive wars.

Here too no culpability of Dr. KRAUCH is given. A participation in the waging of aggressive wars in his capacity as a member of the Vorstand, or as member of the Aufsichtsrat, is out of the question from the very beginning, particularly because KRAUCH did not exercise those functions during that particular time. Only the question has to be examined whether perchance a responsibility in the above-mentioned sense could be construed from the fact of his honorary position as Gebechen (General Plenipotentiary for Special Questions of Chemical Production).

This assumption too is denied by the defense just as a participation in the preparation for aggressive wars of aggression. Even the state of facts of the waging of aggressive wars does not exist, because KRAUCH's activity was an insignificant one, insignificant because it concerned not only a relatively but also an absolutely small sector of chemistry, and because of the fact that in his positions he was not authorized to make decisions.

However, the state of mind is lacking too, because the prosecution did not furnish sufficient evidence which would prove beyond any doubt that



Dr. KRAUCH was absolutely sure that the wars since 1939 were wars of aggression. Our propaganda pictures these wars as defensive wars, especially by pointing out the fact that England and France had declared war on Germany, and KRAUCH - like all citizens of Germany - had no opportunity to obtain unbiased and objective information about this problem 32). For the sake of completeness I want to refer here to the well-known judgment of the Supreme Court of the United States of 25 May 1931, in the McIntosh case, which advocates the point of view that it never can be up to the individual citizen to examine whether a war in which his country is involved is a just or unjust war. In connection with this judgment, I introduced as the last of the documents which I submitted to the high tribunal concerning the knowledge of the German people of the intention of waging aggressive wars, that one which contained the statement of General Marshall, declaring that it is the duty of every citizen to fight for his country in case of war, regardless of its causes. Moreover, every kind of activity was placed from the start of the war on under the ever-increasing demands and pressure for more production on the part of other authorities and offices, the avoidance of which-as explained during the trial by numerous witnesses and defendants in a variety of formulations and expressions-was impossible for everybody, if one did not want to endanger life and limb, not only one's own but also that of one's family. 32a) In particular I refer to the statements of Professor WAHL concerning the state of necessity.

II. Count II of the indictment: Plunder and Spoliation

1.) At the beginning I have to bring to your recollection again the actual status of the position of Dr. KRAUCH in Farben: From 1936 on he did not actually exercise his duties as a member of the Vorstand, and as from 1940 in the same way, he did not actually act as

---

32) TZ 74-77  
32a) TZ 74-77

chairman of the Aufsichtsrat 33). Therefore a possible responsibility of Dr. KRAUCH on these counts in connection with the charges made against the I.G. is out of the question from the very beginning.

2) With regard to the charges made to Count II of the indictment, I do not deal with such trifling matters as for instance the trip to Poland by Dr. WEBSTER 34) or the letter of 28 June 1941, 35) written by Dr. AMBROS to KRAUCH, which were introduced by the prosecution, but I turn at once to the question whether the activity of Dr. KRAUCH as member of the Aufsichtsrat of the Kontinentalen Oel A.G. brought about his criminal responsibility. Two points are at issue in this question: Firstly, that the Konti oel, with regard to stock corporation law, was completely dominated by the Reich Ministry for the Economy, and that beyond it the Reich Ministry of the Economy actually directed the business transactions of the Konti Oel by way of orders and directives, so that the Vorstand had no right of decision. This legal position has been established by affidavits of the former member of the Vorstand, Blessing, and can be deduced also from several prosecution exhibits. If it is true that the Vorstand was not at liberty to act as it saw fit, then this was all the more true for the Aufsichtsrat which on its part-as already explained in a different connection-had no authority whatsoever to issue orders to the Vorstand. 36). Apart from these questions which refer to the organizational set-up of the Konti-Oel, a violation of international law caused by the activity of the Konti Oel cannot be construed for the very reason that the oil production of the Konti Oel in Russia was quite insignificant and was not even sufficient for the requirements of the occupation army there. Thus this excludes any violation of article 53 of the Hague Rules of Land Warfare 37).

3.) Through an extensive case in chief, which formed a part of the

---

33) TZ 78, 79  
34) TZ 80  
35) TZ 81a  
36) TZ 81  
37) TZ 81

evidence submitted for the defendants HARTLIGER and Dr. ILGNER, it has been clarified that for the questions identified by the code word: Norway 38) a criminal responsibility of the members of I.G. is quite out of the question. Quite apart from this, the case in chief for Dr. KRAUCH proved that the boosting of the aluminum production potential in Norway cannot be traced back to the initiative of Dr. KRAUCH. Even from the letter of 19 October 1940, written by a certain Herr IDSCHELL, a document which had been given special emphasis by the prosecution and which indicates that Dr. KRAUCH had allegedly intended to bring about the largest possible participation of the I.G. in the later Nordag, it cannot be concluded that KRAUCH acted on his own initiative or for selfish intentions, because KRAUCH refuted this formulation, drawn up by an overzealous co-worker, at once, with the remark that the quota of the I.G. was fixed by agreements with the Vereinigte Aluminiumwerke etc. as part of the European aluminum production program, and that it never could be increased by more than 10%. 39) Thus this fact eliminates the claim against Dr. KRAUCH by the prosecution. Apart from this, it is a fact that the I.G. never participated in the Nordag. Obviously, it seems to be the intention of the prosecution to punish even a mere intention, which by the way did not pursue any criminal objectives.

Dr. KRAUCH did not participate in the other promotions of the Nordisk Letmetall, the acquisition of the shares of the Horsk Hydra which were in French hands, and also not in the promotion of the Nordag itself 40).

4) The same is true with regard to the Francolor and Rhone-Poulenc transactions 41).

Only two transactions of lesser importance remain to be clarified, one

---

38) TZ 82  
39) TZ 82a  
40) TZ 82b  
41) TZ 83



of which is known under the code name (Simonschacht). Here too, a culpability of Dr. KRAUCH cannot be established. The expert adviser of Dr. KRAUCH inquired in Bad Kreuznach at the office of the Wehrmacht, which had jurisdiction over the evacuated territories as to, who had the authority to dispose over the machines and tools in question, and was subsequently directed in that respect to turn to the Office for Military Economy and Armament. Thereupon, the sole activity of Dr. KRAUCH consisted in inquiring, upon order of a government agency (the Reich Ministry of Aviation), at the Office for Military Economy and Armament, i.e. at another state authority which was named to him as having authority to handle of such matters, whether the removal of generators and boilers from the plant located in no-man's land and exposed to the danger of shelling, was permissible. If now KEITEL, despite the objections raised by the Foreign Office with regard to stipulations of international law of which Dr. KRAUCH did not learn until he came to Nurnberg, issued the order for the dismantling, then Dr. KRAUCH cannot be made responsible for it. In the first place the causative connection between the conduct of Dr. KRAUCH and the dismantling of that single generator itself was separated by this intentionally and, possibly, illegally issued order of KEITEL. Moreover, the state of mind is lacking even for the following reason: whoever asks a state authority for the execution of a certain measure has to depend upon it that the state authority has examined such a measure as to its legality. 42).

5.) Finally, the dismantling of the nitrogen factory Sluiskill in Holland has been clarified, apart from other evidence, by the testimony of the witness RUMSCHEIDT. The latter testified that the "Gebechem" had no influence upon the dismantling order as such and that he did not even take charge of the plant; this was done by the Office for Industrial

of which is known under the code name (Simonschacht). Here too, a culpability of Dr. KRAUCH cannot be established. The expert adviser of Dr. KRAUCH inquired in Bad Kreuznach at the office of the Wehrmacht, which had jurisdiction over the evacuated territories as to, who had the authority to dispose over the machines and tools in question, and was subsequently directed in that respect to turn to the Office for Military Economy and Armament. Thereupon, the sole activity of Dr. KRAUCH consisted in inquiring, upon order of a government agency (the Reich Ministry of Aviation), at the Office for Military Economy and Armament, i.e. at another state authority which was named to him as having authority to handle of such matters, whether the removal of generators and boilers from the plant located in no-marks land and exposed to the danger of shelling, was permissible. If now KEITEL, despite the objections raised by the Foreign Office with regard to stipulations of international law of which Dr. KRAUCH did not learn until he came to Muenberg, issued the order for the dismantling, then Dr. KRAUCH cannot be made responsible for it. In the first place the causative connection between the conduct of Dr. KRAUCH and the dismantling of that single generator itself was separated by this intentionally and, possibly, illegally issued order of KEITEL. Moreover, the state of mind is lacking even for the following reason: whosoever asks a state authority for the execution of a certain measure has to depend upon it that the state authority has examined such a measure as to its legality. 42).

5.) Finally, the dismantling of the nitrogen factory Sluiskill in Holland has been clarified, apart from other evidence, by the testimony of the witness RUMSCHEIDT. The latter testified that the "Gebochen" had no influence upon the dismantling order as such and that he did not even take charge of the plant; this was done by the Office for Industrial

Research (Wifo) of the Reich Ministry of the Economy, KRAUCH served only as an adviser concerning the utilization of machines, 43), the dismantling of which was decided upon by other authorities.

6.) For the evaluation of the inner attitude of the man KRAUCH, the defense submitted to the High Tribunal material which indicates that Dr. KRAUCH prevented the dismantling of French, Belgian and Dutch nitrogen factories, planned by German authorities, he demonstrated the same attitude as to the planned dismantling of the valuable laboratory of the Shell Company at Amsterdam and he prevented finally also the incorporation of the German Fordwerke which belonged to the American Ford concern, into the Hermann-GOETTINGwerke. 44)

THE PRESIDENT: The Tribunal will rise for lunch until one-thirty.

(A recess was taken until 1330 hours, 2 June 1948.)

---

43) TZ 85  
44) TZ 86



AFTERNOON SESSION

(The Tribunal reconvened at 1330 hours, 2 June 1948.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: You may continue, Dr. Boettcher.

DR. BOETTCHER (Counsel for defendant Krauch): I am now turning to Count III of the Indictment, Enslavement and Mass Murder:

1.) As representatives of I.G. Farben, Dr. Krauch is not to be held responsible on this count. In point of time, the facts under consideration here all took place after May 1940, thus at a time when Dr. Krauch was no longer a member of the Vorstand. As a member of the Aufsichtsrat, Dr. Krauch is not responsible for two reasons: first, on the basis of his partial withdrawal from I.G. Farben already mentioned, and secondly because - in agreement with the Trial Brief of the Prosecution, Part III, pp 19 and 23 - Dr. Krauch cannot be included under Count III for alleged crimes any more than can the other members of the Aufsichtsrat who are not placed under indictment for this; it is decisive that according to German joint-stock company law, the Aufsichtsrat has only certain supervisory functions, but is not, on the other hand, superior to the Vorstand and has no right to give orders to the Vorstand. I refer to paragraphs 86 and following of the Joint-stock company law of 30 January 1937. For Count III, then, only Dr. Krauch's responsibility originating in his honorary position as "Geheime" is to be considered. The Prosecution has attempted to prove that Dr. Krauch displayed criminal initiative as set forth in Control Council Law No. 1, within the scope of labor allocation. The defense is of the opinion that the prosecution has not proved this, that rather the defense has proved the contrary, namely the lack of any real initiative and moreover and irreproachable humane attitude on the part of Dr. Krauch.

2.) For this question, Dr. Krauch first of all described in detail how,

when he was asked for advice by the competent ministries immediately after the beginning of the war, he recommended the so-called utilization of  
45) firms in recruiting voluntary workers, in connection with the experience he had had with this type of employment of voluntary workers in the reconstruction of the I.G. Farben plant at Oppau which was destroyed by an explosion in 1920. In the case-in-chief, the favorable experience which he had had with this utilization of firms was illustrated in detail. In  
46) particular, the extensive welfare program was also proved. This so-called  
47) utilization of firms does not violate any provisions of international law, no matter how stated. Even the prosecution did not make this claim. If  
48) it attempts to prove, however, that Dr. Krauch is responsible for compulsory measures, which for example were undertaken in extending the work contracts which were at first voluntarily concluded, or in the breaking of these work contracts, it has failed to bring forth any evidence in support of these claims. The defense has, moreover, proved that Dr. Krauch as "Gefechem" did everything in his power in order to help those workers as well, in the fact of the compulsory measures which did not originate with him, and to enable them to escape those compulsory measures.  
49)

3.) Now, as the war situation led to a further manpower shortage, the so-called slave-labor program came into being with the appointment of Sauckel also Plenipotentiary General for Labor Allocation. This program will be treated in detail by Herr Dr. Hollmuth DIX.

In connection with this, I would like to say with regard to Dr. Krauch:

a) It has been determined beyond the shadow of a doubt that Dr. Krauch did not take part in evolving and formulating the plan to bring foreign workers to Germany on the basis of the compulsory service laws. Quite apart

45) - Footnote 90, 91.  
46) - " 92.  
47) - " 92.  
48) - " 93.  
49) - " 94, 95, 96.

from his own statements with regard to this, it may be seen from the fact that he had no connections of any sort with the Staff of the omnipotent confidant of Hitler, the Plenipotentiary General for Labor Allocation, Sauckel, and that he was not on the same level in the official hierarchy as Asuckel, but was on a much lower level, in which connection, the title "Plenipotentiary General" should - as has already been stressed - by no means be misleading, and besides, he had no absolute power and authority, as did Sauckel. Dr. Krauch was completely removed from these things and this program. Indeed, not only that he himself stated and his colleagues confirmed the fact that Dr. Krauch rejected the compulsory labor program first for ethical and then for practical reasons. Neither Krauch nor the employer firms could avoid the allocation of foreigners, because otherwise the production pressure and the production quotas could not have been met. It was always explained that priority would be given to German workers, and Dr. Krauch himself, and after him, the witness Milch, spoke their minds regarding a conflict in the Central Planning Board, which lead to disagreements, when Dr. Krauch, contrary to opposing directives, demanded German workers.<sup>50)</sup> The witness Schieber also recalls a similar incident. Apart from this general frame of mind and attitude, however, any initiative on the part of Dr. Krauch is completely lacking in questions of labor allocation. For the employment of foreign workers under the stress of the compulsory service laws, as well as for the employment of prisoners of war<sup>51)</sup> and concentration camp prisoners, the following applies:

First of all, a survey is required of how workers were allocated within the German war economy, and what activities Dr. Krauch performed for this allocation. As has been shown, Krauch did not carry out any construction on his own responsibility. The construction ordered by the Reich

50) - Footnote 96:  
51) - " 88, 97, 98.



Ministry for Armaments, and War Production, etc., as a result of the known quotas, were carried out by I.G. Farben, the Brabag (Braunkohle-Benzin AG) the Hydrierwerk Blochhammer AG - I am mentioning examples only. These firms and companies enlisted the workers necessary for this. They were the employers, they were responsible for the well and use of the workers whom they employed, they agreed upon the wage scales, they provided accommodations, food, free-time activities, etc. Dr. Krauch as "Gebochem" and his staff gave consultations and advice with regard to the type of construction to be chosen for these edifices. In this connection, Goering's charges in the meeting with Hitler in May 1944, that in this connection Krauch gave the wrong advice - with regard to the construction of the necessary machines, with regard to the consumption of material, with regard to the deadlines in question; and one of the points requiring advice was also the rendering of a judgment about the use of workers with regard to the number as well as the type (technical workers etc.) The firms which carried out the authorized building on their own responsibility, at their own cost, requisitioned for their part the necessary workers, at first at their local employment office. If this local employment office could not meet the requested need, the firms applied to the Regional Employment Office, and if the latter was also incapable of meeting the request, to the Reich Ministry of Labor, and/or the Plenipotentiary General for Labor Allocation. Krauch was now called in upon this request, for they would only make available to the individual plant the required workers which could not be obtained locally if the office appointed for this purpose by the highest authorities as experts, that is, the "Gebochem", declared that this requested manpower was necessary and in due proportion. In this connection, the "Gebochem" had the same status as a number of similar advisory offices, as for example, the Director of the Economic Group Machine Construction Lange for the machine industry, the Director of the petroleum department

of the Regional Geological Institute, Professor Bontz, for natural petroleum.

An especially good example (instead of many others) for the correctness of the above description is Ambros Exhibit 114 (Document 417, Document Book IV, page 36). There in the minutes of a discussion at the Regional Employment Office Kattowitz it is stated:

"Our (i.e. the plant Auschwitz) desires in regard to the Allocation of labor were presented to Herr President Dr. Ordemann", and it is interesting to note from these minutes further the specification requesting German workers, for at the end the statement is made: "The Regional Employment Office promised every conceivable aid, in particular in obtaining the requested 3,000 German workers, in order that the Regional Employment Office would not be burdened with further requests." One could not prove the actual situation of labor allocation more clearly than by this document, which is only an example for many.

If one keeps in mind these simple and clear outlines, the following results for Dr. Krauch's position <sup>52)</sup> :

By no means can it be said that Krauch himself had the choice of a certain category of workers, whether foreign workers, prisoners of war or concentration camp prisoners, or that he himself had decisive influence on the distribution of a certain category. The tiny sector of the "Gobochem" within the scope of the millions in the armament industry, with its worker requirement of 150,000 to 200,000 men, of which about 10 to 15% was always lacking in order to meet peak demands and could not be met, had to be supplied, just as did the requirements of millions on the part of the military decisive armament industry (cf. Prosecution Exhibit 2239, Doc. Book 94, p. 37), from the large general reservoir in Sauckel's care; these labor allocation authorities alone had the decision and authority regarding the type of employees who were to be allocated to the individual construction enterprise.

52) - Footnote 88, 97, 98.

Those very facts prove that Krauch's activities in matters of labor allocation could only be of an advisory or consultant nature and that this opinion is not being stated in order to minimize Krauch's position and - contrary to the actual facts - to deny that he could take the initiative which the prosecution claims to be the basis for its opinion.

This position of Dr. Krauch has been proved and substantiated through many details, partly as listed in the prosecution documents themselves as well as in the direct examination and through other evidence.<sup>53)</sup> I want to point out especially that this merely consulting and advisory nature of Dr. Krauch's activities was also proved through the fact that the authorities superior to Dr. Krauch were not only in a position to take measures which were in opposition to his advice and his expert opinion<sup>54)</sup> but that they actually did take such opposing measures.

I will now take up the question as to whether Dr. Krauch is liable to punishment because of the inhumane treatment of so-called slave laborers. Dr. Krauch's defense is of the opinion that Dr. Krauch is not responsible for the treatment of the workers for the simple reason that - as has already been emphasized - he was not the employer. Labor conditions were fixed by the individual plants and by the persons responsible for this task within the plant. The prosecution failed to submit proof that Krauch is responsible for any treatment of foreign workers which violated human dignity.

In addition to this, several other defendants, especially Dr. SCHNEIDER, DR. ALBROS, Dr. WURSTER etc. have submitted extensive proof that any treatment that would have violated human dignity was absolutely out of the question. Krauch's attitude, on the other hand, is characterized by the fact that, although he was not a responsible employer, he nevertheless supported all measures connected with welfare in the plants to which he was assigned as an advisor and that for ethical

---

53) TZ 88, 97, 98

54) TZ 88a



reasons he gave many suggestions for social and human care, often - and this should be especially emphasized - contrary to the ideas of the party authorities. He has submitted extensive material in order to substantiate the evidence submitted by the individual plant leaders of I.G. Farben who are accused in this trial.<sup>55)</sup>

b) With regard to the allocation to labor of prisoners of war the evidence clearly revealed that Dr. Krauch's activities were in no way the cause for the assignment of prisoners of war, which would, incidentally not even have constituted a punishable offense. Besides, the prosecution failed to submit evidence that prisoners were used in any way for work which would not have been in agreement with international provisions. The labor authorities and the Wehrmacht were the only ones to decide about the labor assignment of prisoners of war. As proved by the material submitted in the PW document book, it was the Wehrmacht alone which supervised whether the assignment of prisoners of war was carried through in a manner permitted by the provisions of international law.<sup>56)</sup>

The prosecution used as a basis for an alleged offense on the part of Dr. Krauch a letter which a co-worker of Dr. Krauch, Kirschner, had sent to General Thomas on 20 October 1941 and in which Dr. Krauch recommends the assignment of Russian prisoners of war in the "armament industry". During the examination of Dr. Krauch, which was substantiated by testimonies of the witness Milch and several affidavits, a sort of chronological chart demonstrated that this suggestion of Dr. Krauch, which - as testified by his co-worker - was incidentally the result of humane deliberations could not have been the cause for any assignment of Russian prisoners of war which allegedly violated international provisions (though such violation was not proved).<sup>57)</sup>

---

55) TZ 99  
56) TZ 100  
57) TZ 100a

All other charges of the prosecution concerning this subject, especially prosecution exhibits 481<sup>58)</sup>, 1371<sup>59)</sup>, and 1845<sup>60)</sup>, should be mentioned here only in so far as they too, do not prove any criminal criminal actions on the part of Dr. Krauch, as for details I refer to my closing brief.

Upon request of all defense counsels I have submitted a document book dealing with the questions of the allocation and the treatment of prisoners of war, which I have submitted during the session of the Tribunal of 4 May 1948<sup>60a)</sup>. The excerpts from commentaries for the interpretation of the respective provision of the Geneva Convention; the legal regulations concerning the legal situation in Germany, decrees of the Reich Minister for Labor, orders by Goering concerning the assignment of Russian prisoners of war speak for themselves.

The same holds true for 2 affidavits which I have introduced with regard to the question as to who was responsible for the enforcement of the provisions governing the commitment of prisoners of war in accordance with the rules laid down by international law. It was the Wehrmacht and the officers which it appointed who had to supervise this commitment in all details, particularly with regard to its legality under international law. I wish to draw the attention of the High Tribunal particularly to that part of the German regulations which declared the employment for construction and plant work in Buna and in hydrogenation plants permissible. Attorney-at-Law Dr. SKIDL will discuss in his final plea further details in connection with this question.

c) Now the question of utilization of concentration camp inmates:

The prosecution regards as evidence for a criminal initiative on the part of KRAUCH the fact that the so-called GOERING Order of 18 February 1941, Exh. 1417 - which was addressed to

58) TZ 101, 104

59) TZ 105

60) TZ 102

60a) German transcript page 13655, Engl. transcript pg. 13357.

HIMMLER, listed as the last of the recipients of a copy - in addition to three others who held positions of much higher rank to judge from their standing and authority - also the name of Dr. KRAUCH. Well, the fact that somebody got a copy for information does not permit to draw the conclusion of initiative. Dr. KRAUCH on his part has proven that both from general point of view and especially in the case of Auschwitz he was against the utilization of concentration camp inmates; and we haven't only his testimony, but also that of the witness GOERNERT who described that this order came about because Dr. KRAUCH, in contrast to HIMMLER, held the view not to use concentration camp inmates.

We further have the testimonies of his assistant<sup>61)</sup>

Dr. KRAUCH's action to communicate this order to the I.G.

Farben<sup>62)</sup> is as little punishable as an identical occurrence which was decided in Case VII (South-East). There the Chief of the General Staff of an Army who had not only passed down, but even drafted, an order which violated international law, was not held liable to punishment; see English Transcript pp. 10500/01. Nor can criminal initiative on the part of Dr. Krauch with regard to the utilization of concentration camp prisoners be proved by referring to other charges of the prosecution.

This basic fact cannot be influenced either by a number of details which the prosecution has introduced as evidence for an alleged initiative, such as the letters FOHL-KRANEFUSS, KEHRL-KRAUCH etc. I shall discuss these details in my closing<sup>63)</sup> brief.

Quite apart from the question of initiative, it must be noted

61) TZ 106, 107

62) TZ 107a

63) TZ 108, 111, 112, 113, 114, 116



that in the findings of the other Nuerenberg Tribunal employment of concentration camp inmates was not hold a criminal offense. May I point out the opinion in the FLICK Judgment and may I also call special attention to the settlement of Judge Michael A. Musmanno in the MILCH Judgment where he says explicitly that no charge of barbarity can be made against the utilization of concentration camp inmates for work, but that useful employment is preferable to inactivity in captivity:

"Concentration camp inmates were used for work and no charge of barbarity can be raised against this. Yes, useful employment is to be preferred to inactivity during captivity" 63a).

As far as disgraceful treatment of concentration camp inmates is concerned, which the MILCH Judgment was justified in holding wrong, the prosecution has offered no evidence to prove that KRAUCH knew about such disgraceful treatment. The same applies to a knowledge on KRAUCH's part of the tests on human beings and other atrocities in the Auschwitz concentration camp.

DR. KRAUCH has left no doubts that he had investigated the rumors about bad treatment of concentration camp inmates and about atrocities in concentration camps. He described in a credible manner that the result of these investigations had been negative, and on one of the very last days of this trial the correctness of KRAUCH's claim was substantiated by the witness MUENCH. In addition, the defense has tried to present further proof for the veracity of Dr. KRAUCH's claim that he knew of no such incidents. In accordance with the old principle "Negativa non sunt probanda" the defense cannot offer direct counter-evidence. But it has offered evidence with regard to Dr. KRAUCH's ethical approach in a case which was completely identical. Although entirely outside his jurisdiction, Dr. KRAUCH intervened with all the authority at his command and in a very impressive manner in the so-called shalomaphtha case in Wuertemberg.

63a) P 14 of the dissenting opinion.

Apert from his statement, detailed affidavits are available on this question.<sup>64)</sup> Dr. KRAUCH thereby was proved that he intervened in another case, which had no connection with the I.G. Farben case, as soon as he learned about inhumane conditions, and the defense, therefore, deduces that Dr. Krauch's claim, that he would have taken action if he had known about what went on in Auschwitz, is true. The defense would not like to suspect that conclusions unfavorable to Dr. KRAUCH will be drawn from his decent attitude which was proved in the Schoenberg case.

DR. KRAUCH raised his voice against disgraceful conditions; he offered resistance. How dangerous such an attitude was has been described by many witnesses. Contrary to all expectations, nothing happened to Dr. KRAUCH. It can, of course, be followed that Dr. KRAUCH was in a position to offer a certain measure of resistance. One thing, however, is decisive: The opposition was not directed at the basic problem but only at the manner in which the utilization and treatment of concentration camp inmates was handled. It probably appeared also to FOHL more suitable to treat concentration camp inmates somewhat humanely in order to comply with production quotas and ease the pressure of production; but this example offers no proof concerning the question whether opposition could be risked without danger to life and finally against basic orders and directives which concerned the extent of war production, meeting of production deadlines, etc. All experts who have been heard on this point also in this trial agree that such opposition against the "whether" was impossible; and as is self-explanatory, such a position could not be tolerated by the government because the government was unable to permit any opposition whatsoever as far as pressure on production quotas were concerned in view of the bottleneck in the manufacture of innumerable war-essential products which was proved in this trial.

Thus I come to the conclusion of my discussion of the various facts, offered both by the prosecution and the defense, with regard to Counts I -III. In summarizing, I arrive at the following result:  
Dr. KRAUCH doesn't belong at all in this dock.

As I have already proved, he obviously no longer had any close connection with I.G. Farben after 1936. Thus there was no basis to indict R. KRAUCH in connection with the I.G. Farben.

Nor was there any reason to make him a defendant because of his honorary position in the government economic organization, since his position was far below the level which is of interest to the High Nuremberg Courts. In the IMT the defendants were cabinet members and specially outstanding confidants of HITLER. Dr. KRAUCH by no means belonged to this category.

In the so-called Ministries Case there is no place for Dr. KRAUCH among the defendants, since these are only high government officials down to Under State Secretary, a rank which Dr. KRAUCH did not reach by far.  
(64a)

The correctness of that conclusion



is also evident from the fact that none of the other Plenipotentiary Generals - with the exception of Samckel who, as was shown, held a special<sup>64b)</sup> position, was indicted although a number of them held actual powers in contrast to Dr. Krauch.

IV. To round out the picture which I was permitted to present to the High Tribunal, it is only necessary to discuss a few points about the man Krauch. In line with his attitude of reserve, he refused in the direct examination to say anything in this respect. It thus was left to the defense to prove his humane attitude by introducing a number of documents. This was done by explaining his attitude towards Jews and Half-Jews<sup>65</sup> whom he saved from persecution by the Nazis, whom he helped with the full weight of his personality. Undaunted he held to the Church and its institutions, although this might have led to persecution in the Third Reich<sup>66</sup>. Moved with emotion, renowned scientists described how he defended the freedom of science against adverse party tendencies which were energetically supported, how he also stood up for persons who had fallen in disfavor with the Nazi regime.<sup>67</sup> He did all this in taking advantage of his honorary position without which such comprehensive assistance would have been impossible altogether. And finally we have proved a number of facts which I find essential when evaluating the man Krauch. Dr. Krauch was one of the few who, when he heard of the humiliating treatment of concentration camp inmates, had the courage in the face of personal danger to offer resistance, when he described these conditions to Pohl as "a disgrace to our culture" and asked remedy to the situation. He is one of the few who could prove that he investigated the rumors about disgraceful treatment of concentration camp inmates and atrocities in concentration camps; he cannot be blamed if the result was negative; this was due to the general situation, about which.

64 b) T2 48a  
65 ) T2 9 b  
66 ) T2 9 c  
67 ) T2 9 a

I refer to Dr. Muench's testimony. And finally we have proved, how at the end of the war, Dr. Krauch, also in the face of personal danger, acted against the orders which purported to destroy the last semblance of civilization which had already been seriously shaken by the war. The picture is clear, the line is drawn; are there any doubts left, Your Honors? Now then, let me testify on behalf of Dr. KRAUCH. I stand up for him; he is no war criminal; he is not a man who approved of the concentration camp atrocities, no narrow-minded Party man, not a man who participated in the slave labor program, but a man who remained faithful to his career as a scientist and to his obligation toward true humanitarianism. Believe me, when for an entire year you are together almost day-in day-out with a man you learn to distinguish between the things that are genuine and others which are but a pretense; between true and false; inner value and facade. For me nothing was more helpful to enlighten the situation than the statement by the president of Standard Oil, Haskam, already quoted, who at a time when a flood of hatred and insinuations is being hurled against the I.G. Farben, had the courage to pay tribute to the high standard of business ethics of the I.G. Farben, and who in this connection singled out particularly the name of Dr. KRAUCH. Contrary to the German custom in the procedure governing criminal trials, the prosecution upon an instruction by the High Tribunal speaks after the defense. Therefore, I cannot foresee in what tone the prosecution will deliver its plea. Regardless of the way in which it will compile it, regardless of the form in which it will present it, I have desisted from indulging in any generalizations, or exaggerations which the prosecution chose in its Opening Statement, Trial Brief and other occasional statements. I was thereby mindful of the words which the President of this Tribunal so often used in this courtroom: "Come to the point in your questions. Ask simple questions"; and thus I have tried in line with Dr. KRAUCH's and my nature to handle and describe things in a direct and simple

68 ) TZ 9 d

manner. Behind this simple formulation, however, is concealed an ardent endeavor and a struggle with this overwhelming material which the prosecution caused us to arrange and to explain. It was necessary to present it along plain, practicable lines in order to make it easier for the High Tribunal to find justice. It would be the reward for this ardent endeavor if also the result of your examination, Your Honors, would be: This man is not guilty:

THE PRESIDENT: The Tribunal will hear Dr. Dix.

DR. RUDOLF DIX: Counsel for defendant Schmitz):

Your Honors,

Allow me to preface my final plea with a personal confession. I believe that no judge can find the truth in this trial, or pass a just sentence, who considers as isolated phenomena, or, worse still, as a formal exercise, the organic developments which are here concerned, or who imagines that he can allow himself to set black against white, or who believes, that "facts" and "figures" alone suffice; but who fails to realize that he must plumb the depths of sociological and psychological research, if he would understand the complexity of those organic developments which connect the IG, and, therefore, these defendants with the origins, the rise, and the fate of Hitler and his Third Reich.

When considering my client, Schmitz, and his fate, a concept inevitably comes to one's mind which the most intelligent nation which ever existed, the ancient Greeks, developed in the course of their philosophical quest: the abstract concept, and the concrete realization of a "moira", of ineluctible fate, whose experience of pleasure and pain is the predetermined consequence, independent of free will, of that "moira".

Eminently suited to the theory and practice of finance, interested in little else, devoid in particular of interest in, and talent for, things political, a law abiding citizen, an excellent "craftsman" in



the sense in which Hedda Gabler was in Ibsen's play of that name, he was a man who worked quietly in the seclusion of his study, who was averse to any kind of public display, and who was at the same time, as all the witnesses agree, a great humanitarian - in short, the type of German who has always rightly been acclaimed throughout the world. But now, in the 68th year of his life, he appears as a defendant in a trial of a definitely political nature with a definitely political background, - a trial which has been linked by the world press and by the Prosecution with the dreadful and monstrous atrocities connected with the name of Auschwitz. A trial which involves world history, as it is one of the accusations levelled at the defendants by the Prosecution, that they intentionally helped to unleash this, the most dreadful war of all times, that they were involved in the crimes committed by Hitler's praetorian guard, and in Hitler's rise to power and in the consolidation of that power, although Hitler, as the D.M. stated, if he was not alone guilty of all these things, had had a very small number of accomplices.

"How could it happen" is the striking title of the book by a certain Stechert, a socialist, working class author, who describes with that expert knowledge and lack of prejudice in political, sociological and psychological matters which is so rarely found

in politicians cramped as they are by ideologies and party politics, the chain of cause and effect which led to the victory of the Nazis in Germany and to their abuse of that victory - a victory which the last French ambassador in Germany, Francois Poncet, who was a man of very lively intelligence, has called "la victoire des boches sur les Allemands".

Well, my client always has been, and still is, an "Allemand" of the best type, which has rightly enjoyed, at all times, the esteem of those people who are able to distinguish amongst the nations of the world; he is anything but a "boche". How did he come to be a defendant, sharing the fate of technologists, scientists, and business men, who by bringing about a praiseworthy alliance between scientific research and the practical exploitation, both scientifically and commercially, of such research, led a company, which must, a priority, and *prima vista*, appear to the keen observer to be a benefactor of mankind rather than a criminal plague afflicting it; it is an old story that a criminal government can deprive of their splendour the achievements of science - destined to serve mankind - and can make them the instruments of crime, or at least of disaster. The fear lest such scientific achievements which might have brightened the lives of millions should be turned to such evil purposes has always been a nightmare to those scientists and to those others who financed them or who had something to do with financing them, as did my client. This fear, in the person of Bosch, is described in a very moving manner by the witness Buscher in his affidavit, Document Schmitz No. 6, Exhibit No. 6, Document Book No. 1. That your own atomic research scientists also entertain such fears, your Honours, is shown in a report with which I presume the Court is familiar, namely the Stimson report on the developments which preceded the decision to use the atom bomb against Japan. One should therefore think that we are in very good company amongst the defendants, and experience should further teach us, that, in the words of Hamlet, the

royal philosopher, there is always "something rotten in the State of Denmark" when the prisons and the docks of the criminal courts are crowded with those who are usually numbered amongst the best of their nation. Thus it was for example a symptom of the destruction of Justice and of the life of society in the third Reich, that the physiognomy of the average prisoner took the place of that of the average defendant, that the criminal type receded into the background and his opposite came to the fore, - that the number of prisoners, detained awaiting trial, whom a defense counsel had to visit in the prisons of the Third Reich actually reflected credit upon the defense counsel. The defense counsel visited in the course of his duty, idealists from all sections of the population, Germans who had preserved intact their integrity of character and their independence of thought, representatives of socially elevated professions. The defense counsel visited prominent scientists and pastors, courageous leaders of the working class, honest soldiers and officers, in short, the elite of the nation, properly understood. Such a phenomenon is bound to arouse doubts as to the legal and moral justification even of such outward appearance. It is the duty of every judge to examine whether such doubts are in fact justified. Should he realize, that prejudice, fostered by falsification and by other legends, by party politics, by ignorance of conditions abroad, are the spiritual begotten of an indictment, he must approach his legal assessment of the "facts" with a maximum of circumspection, even, and especially, if on the fact of it the facts would seem to suggest guilt, if only those things which I have described above as the result of legends, party prejudice etc., are accepted as true.

In his Opening Statement before this Court General Taylor has said:  
and I quote:

"....charges that the defendants, together with other industrialists, played an important part in establishing the dictatorship of the Third Reich. The aim of the defendants was conquest. The origin of the crimes



with which the defendants are charged may be traced back over many decades, but for present purposes their genesis is in 1932, when Hitler had established himself as a major political figure in Germany, but before his seizure of power and the advent of the Third Reich.... charges that the defendants, together with other industrialists, played an important part in establishing the dictatorship of the Third Reich"... and again I quote:

"When we charge an alliance between the defendants and Hitler and the Nazi party"...

and again I quote:

"without this cooperation, Hitler and his party followers would never have been able to seize and consolidate their power in Germany, and the Third Reich would never have dared to plunge the world into war."

"Farben's devotion to the Nazi party and the Third Reich continued to be ironclad"....

and many other passages.

In this connection the General, in the Flick trial, coined the phrase, which proved so attractive on first sight, of the "Unholy Trinity"; National Socialism, Militarism, and Economic Imperialism. When referring to these statements of his in future, I shall use that slogan: "the Unholy Trinity" for the sake of brevity.

All the statements made by the Prosecution in the three industrial trials which have been or are being conducted here are therefore based on this thesis of the "Unholy Trinity", which is supposed to have been established as historical fact and therefore fit for acceptance by the court. The whole elaborate structure of the charges brought against the defendants is therefore based on the thesis that the captains of industry and economy - and, in this case, the leaders of Farben - and the generals put Hitler into power. This assistance, and more especially the financial assistance rendered by industry and therefore by Farben is not only supposed to have established his position of power, but

also to have consolidated his dictatorship. And those industrialists, including these defendants, are supposed to have done all that in order to indulge their aggressive economic imperialist ambitions, even at the risk of war which might be the inevitable result of such a policy, nay even of a war, conceived in certain circumstances, as an instrument of such a policy.

But the Prosecution have not even attempted to submit evidence to show that industry in general and Farben in particular had rendered such assistance, that the so-called "Unholy Trinity" had in fact helped Hitler to seize and to consolidate power. They have assumed that thesis to be historical fact, a fact which is generally known and therefore fit for acceptance by the court: that, at least, is the only possible explanation of the fact that no evidence in proof of that thesis has been submitted: there can hardly be any doubt that the thesis requires proof. Not even the Prosecution would, I suppose, claim that the statements of a factual nature submitted in evidence, or even circumstantially proven facts, and even reliable confessions made by the defendants themselves would be satisfactory proof especially in connection with the charges made in Count I of the Indictment, but also, implicitly, with the charges referring to the imperialist exploitation of foreign countries by means of spoliation and enslavement, unless they had assumed the thesis of the "Unholy Trinity" to be proven fact. But if the thesis of the "Unholy Trinity" is rejected, the circumstantial evidence submitted by the Prosecution loses continuity and cogency; it simply collapses. This will be proved conclusively in all the final pleas made by the Defense. In proof of my remarks in connection with the evaluation of evidence I shall only cite four examples: let us consider Farben's contributions to armaments production prior to 1 September 1939. One could perhaps call that contribution large considering the size and importance of the enterprise. The use of the adjective "large" depends of course entirely on the point of view of the

beholder. But let us suppose, for the sake of argument, that these contributions to armaments productions can be described as "large." If the thesis of the "unholy trinity" is rejected, Farben's contribution for armaments production, for which, in the financial sector, my client was coresponsible, must be considered as completely harmless, natural, and obvious, devoid of any criminal character, without value as incriminatory evidence. It did not take the authority and the precedent established by the IMT judgement to show that armaments as such are neither criminal nor indicative of criminal intent. The opposite point of view would shame the most peace loving of nations. Thus nobody has ever dreamt of accusing Switzerland, or is likely to do so, of pursuing a policy of aggression, or planning aggressive war; it is, nevertheless, common knowledge, that Switzerland has always endeavored in the interests of neutrality to adapt her armaments quantitatively and qualitatively to the demands of the hour. Is armaments production of these powers who are at this moment



FINAL PLEA SCHMITZ

full of apprehension for world peace on account of the present international situation, to be considered as circumstantial evidence of plans which are criminal from the point of view of international law? To put that question is tantamount to answering it in the negative. But the Farben contributions to armaments production would appear in quite a different light if the theory of the "unholy trinity" could be applied: in that case that thesis would prove that there had been a breach of the peace by aggression with criminal intent. The error in logic of a typical *petitio principii* is involved in the Prosecution's whole argument.

A second example: Any decent and peace-loving industrial enterprise will put at the disposal of the government and the army of its country, its archives, its foreign service, in short, the whole of its organization, if it is normally patriotic, even if no legal pressure or pressure of any other kind is brought to bear upon it. No man with any experience of life will blame a firm for such an attitude. - But such an attitude would appear in quite a different light if the thesis of the "unholy trinity" be true. Once again the same *petitio principii* in the evidence submitted by the Prosecution. A third example: The defendants state that they had employed foreign workers in their plants unwillingly and under protest. That statement would not deserve credence if it could be proved that even before Hitler's advent to power the defendants had planned to put Hitler into power and to consolidate his position, in order to enable him to exploit foreign manpower by means of compulsory labor. The Prosecution's somewhat artificial concept of deliberate spoliation, too, would benefit considerably if the thesis of "unholy trinity" were true. And the fact that my client rendered financial assistance from Farben funds to the Sudeten Air Fund and its voluntary associations must seem to any unprejudiced observer as absolutely harmless in view of the political

situation at that time. For details in connection with that statement I should like to refer you to our closing brief. All that would appear in quite a different light if it were an established fact that Schmits and his colleagues had assisted Hitler in his attempt to seize power from the very moment when it became possible to do so, and had approved the aggressive and terrorist methods which Hitler used in the case of the Sudetenland and of Bohemia-Moravia.

There are many more examples of that kind. They illustrate the flaws in the evidence submitted by the Prosecution. Their method in that connection is as follows: the value of the evidence submitted by them is based on the assumption that a false thesis, i.e. that of the "unholy trinity", is true: whereupon the attempt is made to prove that thesis by means of the fictitious value of the evidence, or to illustrate the point by means of Count I of the indictment: if it were true that Farben had helped Hitler to seize and consolidate power on account of their aggressive and imperialist aims, their contributions to armaments production would have been circumstantial evidence in support of Count 1 of the indictment. That argument could be applied mutatis mutandis, to the other points of the indictment. A determination on the part of Farben to help Hitler to get into power could on the other hand only be proved, could it be shown that subsequent contributions to armaments production served deliberately aggressive purposes. The whole of that presentation of evidence is, putting it crudely, like a cat chasing its own tail, or, in legal phraseology, a typical *petitio principii*.

Thus the Prosecution open their case with a legend, the sources of which are tainted at all times, from which rises the fog of an accusation based on resentment. It is the duty of the judges to disperse that fog by the bright sunlight of their investigations, lest this trial, too, remain under the cloud of an error borne of the circumstances of the time which will, ~~believe~~, be viewed ironically in the verdict

of history in the not far distant future. My client is a victim of that error of time. In our time it is the greatest possible misfortune which can befall a man, or at any rate, it involves him in the very greatest danger, to have been, or even to be at this moment, an efficient, successful man holding high office. That holds true even where the foundations of such success had been laid before the National Socialists came to power.

General Taylor has said that these men had not been indicted because they are industrialists. That may be so. But the only reason why they have been indicted - and I doubt if anybody can deny that, - is because all the defendants were captains of industry, and were, therefore, in the opinion of the prosecution, accomplices to the crimes committed by the Nazi regime, the findings of the IMT on the size and composition of the group of persons who knew, and who were guilty of those crimes, and the logical consequences of the IMT judgment, as well as the Flick judgment in connection with the precarious position of the German industry and therefore of Farben with regard to the terrorist methods of the regime, being completely ignored. Schmitz has become a defendant solely because he is a prominent representative of those whom the Present hunts down, and persecutes, owing to the mistakes and prejudices of the Spirit of the Age: i.e. a representative of the efficient men, who gained high office. Allow me to remark in passing for the sake of completeness that a fiscal policy based on expropriation first deprives these efficient people of the fruits of their efficiency, and the pack will always find an opportunity of hunting such an outlaw down and of rending him apart, by printer's ink or in the interests of so-called political purification or in some other way. But Schmitz was a great expert on economics, holding the very highest office in industry at the head of a concern which neither was nor is particularly liked by the Spirit of the Age. The Nazi ideology, too, was fundamentally absolutely opposed to capitalism, one of the several points on which



it agreed with present day ideologies.

Schmitz was not in the least interested in politics, and was exceptionally reserved, politically as well as financially, in his dealings with the Nazis, under whose domination he must perforce work and live, as is shown in the affidavits made by Krueger (Schmitz Document No. 106, Exhibit No. 101, Supplement to Document Book No. V), Singer (Schmitz Document No. 73, Exhibit No. 73, Document Book No. V) and Abs (Schmitz Document No. 72, Exhibit No. 72, Document Book No. V).

Yes, your Honors, even financially. Any man who is familiar with the avidity of the Party, which concealed under the cloak of charity and patriotism a beggarly, mean, and, in part, corrupt nature I refer you to Goering's Birthday Gifts, who knows what disadvantages and dangers were incurred by those who tried to emulate in their financial dealings with the Nazis the honesty of Joseph, and by the firms they represented, especially if they were administering a well filled exchequer, as Schmitz did for Farben will be greatly surprised to find, when studying the evidence submitted by us how infinitesimal are those political contributions of Farben to which the Prosecution objects, compared with its capital and with the sums expended on other social and charitable ventures. I shall refrain from dwelling at length upon the enormous sums which Farben expended upon research in the first instance for its own sake, without reference to its presumable commercial value, because these eternally glorious deeds which Farben performed as a benefactor of mankind will be graven upon the golden tablets of world history "are perennise", like the giant mountains unsullied by mistrust, hatred and fear, covetousness, error, prejudice or any other manifestations of the Spirit of the Age and of its "public opinion", of that Spirit of the Age which has put on the defendants' bench, to the incomprehension of all those who know him personally, this honest and industrious gentleman, my client. Such a fate is really not in keeping with the law in

accordance with which he set out in, and led his life.

We, my excellent assistant Dr. Gierlichs and myself, have dealt with the details connected with these contributions and the arguments brought forward by the Prosecution in the closing brief, partly to save time, but also because it is easier to read such things than to listen to them. I should only like to mention two points here: Hitler had already come to power when Farben paid into the 3 million fund of the industry for the three government parties, the NSDAP, the Deutsch Nationalsozialistische Partei and the Deutsche Volkspartei, and also, through von Papen, in effect for the right wing of the Zentrum, the sum of RM 4,000,000.-, being its due share, in February 1933. That Hitler had in fact been firmly established in power is shown by the fact that he was able to have the Reichstag put on fire by a trick minions a few days later, in order to dispose of the communist party, and that he destroyed a few days later, all civil liberties and the bulwarks of private business, and created the Gestapo, thus turning, even at that time, free citizens into fear-ravaged slaves. What, do you think, would industry have been compelled to pay, had they not paid willingly the sum of RM 3 million, ridiculously small as it was compared with the financial resources of industry and with the election campaign which was its ostensible object? Besides, an election campaign, which logically involved a free election, was out of the question, since the parties of the Left had been crippled by terrorist methods. As far as the government parties were concerned Hitler at first preserved the fiction of a coalition government of these four parties, but then proceeded to kill off his bourgeois partners politically. Schacht has rightly stated in Schmitz Document No. 30, Exhibit No. 30, Document Book No. II that Hitler could easily have procured these funds elsewhere.

By making that contribution, industry did neither more nor less than it would have done for any government, i.e. to render comparatively

negligible financial assistance, provided it could expect that the government would not be definitely hostile to private enterprise. But Hitler had said a few things in the speech which preceded the opening of the fund, which pleased industry. It was the habit of this amoral visionary, this lunatic and rat catcher, to promise everything to anybody irrespective of contradictions, because to him a promise meant only a political weapon and not an ethical obligation to be fulfilled. That was the case in economic policy at home, as in the above instance, and also in foreign policy, where broken promises succeeded one another in rapid succession. So much for the 3 million RM including the Farben contribution of RM 400,000. - to which the Prosecution has attached so much importance in the industrial trials. Tant de bruit pour une omalotte.

On the subject of contributions to the fund for the widows and orphans of the Waffen-SS and for the associations of Sudeten Germans - which took place after the Munich agreement - the defense counsel for the defendant Schmitz have again chosen to present their arguments in the closing brief. I should only like to add the following on the subject of the fund for the widows and orphans of the Waffen-SS; the IMT never so much as toyed with the idea of collective liability affecting the whole family; it gave a chance even to members of the SS of exonerating themselves. It was never directed against the widows and orphans of SS men killed in action. Such a fund is always hallowed; it makes all contributions legal and ethical. The civilized world does not know original sin in that sense. It is similar to the fundamental idea of the Geneva Convention and the Red Cross - when the enemy has been wounded, or a soldier is ill, he is given exactly the same medical treatment as one's own troops. For similar reasons charity towards widows and orphans is not only entitled, but actually obliged, not to discriminate against them because their husbands and fathers killed in action had at one time been SS men. That is the point at which we enter the



temple of human kindness of which Sorastro sings: "Within these sacred halls 'an seeketh Man". The remainder will be found in the closing brief.

Those charges brought by the Prosecution against my client which are not primarily directed against him or which merely concern him in his capacity as financial expert or chairman of the Vorstand will of course be refuted by the defense counsel concerned. I should therefore like to refer you to the pleasse which will be submitted by my colleagues and to that which has already been submitted by Dr. Baettcher, Attorney-at-Law and Professor Wahl. The legal problems connected with collective responsibility will also be dealt with separately by one of my learned friends. I do not wish to anticipate their arguments which should be very interesting. The special position occupied by my client in his capacity as chairman of the Vorstand will be dealt with in our closing brief. I only wish to touch briefly upon the following point: there would seem to exist in this connection on the part of the Prosecution great confusion of thought and of the most incompatible interpretations of the concept of responsibility

and therefore a false conception of the meaning of the term of negligence in a penal sense. Will you please distinguish carefully between the various kinds of responsibility, moral, political, disciplinary, historical responsibility, and responsibility in civil and in criminal law. In the legal arguments put forward by the Prosecution all these concepts are used in such a manner as to confuse the legal issued. The crimes under international law with which the defendants are charged by the Prosecution are punishable only when they have been committed with intent or in cases of participation with intent, but not in cases of negligence, whether such intent be that of a co-principal, accomplice, instigator, or aider and abettor. "Conspiracy" is a different matter and will be dealt with separately by the defense counsels concerned. In spite of the list given in Control Council Law No. 10 there is no getting away from the fact that it contains no forms of participation in such crimes with intent apart from those mentioned above which have been formulated by the classical Jurists: and that it cannot, by definition, contain any others. But within the scope of these cleareut legal concepts the element of guilt in negligence is relevant only if the person who acts negligently, i.e. in such a way that his action or inaction constitutes dereliction of a legal or moral duty, at any rate assumes the element, relevant from the point of view of criminal law contained in the material facts constituting a crime committed with intent in eventum in his will in that he consciously risks committing such a crime as the possible consequence of his action, thereby willing it eventualiter. We are in short dealing with the concept which the lawyer versed in criminal law calls "dolus eventualis". Beyond these narrow limitations negligence with reference to the charges brought against the defendants by the Prosecution in this case is meaningless, and only the question as to whether there had not been intent is relevant.

I shall now return to the concept of *moira* which I mentioned at the

beginning of my argument. It was, as has been stated above, the moire of the defendant Schmitz that he occupied a prominent position in industry at the time of the Third Reich. In accordance with the Spirit of the Age, that fact led to his presence on the defendants' dock, because the historically inadmissible and ephemeral legend of the alliance between industry, including Farben and Hitler, of the so-called "unholy Trinity" has been accepted as true by the Prosecution, who built upon that false thesis the whole structure of their case.

On behalf of the defense, and, therefore, on behalf of the search for the truth, I should like to acknowledge a debt of gratitude to this tribunal, because they did not make the fact that this fundamental thesis held by the Prosecution cannot be proved, an excuse for preventing us from disproving it, as happened in the Flick case, and as the Prosecution proposed to do in this case. The evidence consisted mostly of documents accepted in evidence by the Tribunal and of the interrogation of the witness Lammers, v. Rammer, and Kastl. The composition and presentation of that evidence caused considerable differences of opinion between Prosecution and Defense and also between the Tribunal and the defense.

It was in my opinion impossible to disprove that these defendants belonged to a social stratum which helped Hitler to get into power and assisted him in consolidating it without showing at the same time which were the factors which led to disaster. Nothing happens without a cause. The second point we tried to prove, namely that the leading men of IG did not belong to those forces, made it impossible to link with the attitude of the leading men of the IG, the enquiry into first causes. Simply because they had nothing whatever to do with those forces and were, on the contrary, opposed to them. It is impossible to submit negative proof, that such and such a thing had not been the first cause, without at the same time submitting proof positive, that such and such a thing had been the first cause. It was therefore inevitable that the presentation



of evidence should go back to the early history of the Nazi rise to power and to the consolidation of that power, i.e. to a very large, comprehensive and complicated subject, with which it was impossible to deal exhaustively in one trial, as everybody knew from the outset. The evidence submitted in a court of law can never become a substitute for historical research, which would be necessary, if the subject were to be treated fully. All it can do is to give pointers and show the way. Because falsifications of history and legends luxuriate after such historical cataclysms on the midden formed by the attempts of guilty men and their accomplices to throw their guilt upon others, from hatred, begotten by suffering, from the egoistical political interests of the toadies to the wielders of power in political life and in public opinion, the Prosecution, too, have succumbed to the danger of completely misconstruing history, for which, being foreigners, they cannot be blamed in the least. The task before this court almost superhuman, to form a just estimate of such a difficult and controversial complex of problems, of which only he can form a just estimate who has studied it for years to the exclusion of everything else, or who knows it from personal experiences. That difficulty has only arisen, because the Prosecution have put forward that unfortunate thesis of the "unholy Trinity" as quoted above in this trial and in all other industrial trials and have founded upon it the whole structure of their case. That is how I came to deal with this difficult and elusive subject, owing to the special theme of my defense. The fault is not mine. By making an attempt to disprove that thesis (more than an attempt was out of the question in the circumstances), I did no more than my bounden duty, since that basic Prosecution theory could not be allowed to go unchallenged.

The evidence speaks for itself, documents as well as testimonies. Although I was overruled on many points, it demonstrated at least the truth and accuracy of two theories contained in two documents, the contents of

which have in part become evidence, and may in part, having been identified, at least be quoted in the course of my argument. The first theory is contained in Stechert's book "How could it Happen" which analyses from an elevated point of view the problems and the complexity of the past:  
(I quote)

"The widely popular theory that the big German industrialists assisted Hitler politically is objectively false. It is even more legendary than the theory that the Reichswehr had consistently and deliberately aimed at world conquest. It might serve the purposes of political expediency to spread such legends, but the historian must be prepared to explode even those legends which might be extremely useful to him politically." (End of quotation).

The second theory is contained in Hoiden's book: "Adolf Hitler, the Age of Irresponsibility", (Europaverlag, Zuerich, 1936, p. 311).

(I quote)

"In accordance with a well-known legend the German industrialists Krupp, Thyssen and Voegler together with the Junkers from East of the Elbe have made Hitler, the little corporal, the Prokurist of the firm Germany, so that he should do the things on their orders which he has been doing for the past three years, or "a worm's eye view of world history," How little Maritz imagines world history to be....And a few lines further on "By the way, the three big industrialists who have to their credit the most concrete and noteworthy achievements of the post-war years, Karl Duisberg and Karl Bosch of the I.G. Farbenindustrie, and Karl Friedrich von Siemens, director of the concern of that name, did not assist Hitler, but opposed him." (End of quotation).

Your Honor, I think that we may have our recess now, having concluded these two quotations. I have another twenty-five minutes, and it may be expedient to recess now.

THE PRESIDENT: We will rise.

(A short recess was taken).



THE MARSHAL: The Tribunal is again in session.

DR. RUDOLF DIX: Your Honors, I was speaking about the result of the presentation of evidence on the charge of the so-called alliance and I quoted from two books which, in my opinion, presented the result of this presentation of evidence well. In this connection, I should like to quote further from a passage from a book which I recommend that you, Your Honors, study together with the books by Stechert and Heiden.

If you wish to gain some insight into this subject which is bound to be a closed book to any foreigner: from a book by Konstantin Silen, (published by Birkbeuser, Basel 1946) I quote:

"Personal ambition may have played a part as it always does, but to assume that a group of ambitious big industrialists, big land owners, bankers and generals, the "moneybags" and the "sword wavers" had "made" Hitler and put him into power, would be taking a naive and superficial view of things. They had no more to do with the "making" of Hitler than they did with the "making" of the crisis which gave him his chance. The membership of the Nazi party was rapidly growing in all classes and professions, and so many members financed the Nazi movement not undoubtedly entirely for selfish reasons, that it could presumably have got by without the finances of the "Ruhr" or of any other particularly prominent group of persons."

In order to pronounce just sentence it is not necessary that this Tribunal should be familiar with the underlying causes of developments in Germany from 1919 - 1945, or should have an exact idea of individual or collective guilt. But the Tribunal must realize that the great enquiry into the origins of and the criminal liability for those catastrophic developments cannot be answered in the primitive manner in which the Prosecution

Prosecution answers it, especially by the theory of the "unholy Trinity", and that that thesis in particular is false. That seems to me to have been proved by the evidence accepted by the Tribunal, in the evaluation of which the Tribunal will of course require all its human understanding, political experience, knowledge of life, and general knowledge. Perhaps those members of the Prosecution who were born in America have become the victims of a typically American idea derived from American history. That has never been the case in Germany. In Germany the citizen always found the State already in existence, a priori towering above him, to which he and some of his fellow citizens were perhaps actually opposed. In Germany, economically powerful middle class groups have never had the power to influence the formation of the State, nor could they had had such power.

To this date the fate of Germany has always been determined from the outside or by individuals, at one time by the princes and the leading politicians, in recent times by a demagogue and usurper of the first order, or by anonymous forces, which cannot be brought to trial. The parliament of the Weimar Republic, too, which was based on proportional representation, the Reichstag of the Weimar interregnum, did not represent the people responsibly since responsibility was anonymous. That applies also to the party bureaucracy of the Weimar period. With apologies to Goethe, the creators of the Weimar constitution "willed the God", by trying to prevent irresponsible government, "but created Evil" in a parliament of anonymous irresponsibility. Contrary to the hopes of its founders, the citizen of the Weimar interregnum lacked a sense of co-responsibility for the affairs of government.

The same applied in Germany to the power of money. That, too has never been able in Germany to influence political

developments or the structure of the State, as the wealthy bourgeoisie did in France after 1830 under the citizen king. Those members of the Prosecution who were born in Germany and grew up into manhood there will agree with me on that point; in any case they will be unable to refute my statement.

It was inevitable that as far as this point was concerned the evidence which was in the nature of things limited should prove nothing except the fact that big industry, at least Farben did not function as a source of funds before Hitler came to power. Hitler's financial resources will form an interesting chapter in the objective historical research of the future. The documents submitted, especially the letter written by the former Reich Chancellor Bruening, published in the Deutsche Rundschau, show, that they did not come exclusively from German sources. It is perhaps unnecessary at the moment, nor is it, one supposes, advisable from the point of view of international political tact, to go into details at this moment. The reasons for the increase in the international political prestige of the Hitler government after it got into power are also to be found chiefly in the attitude of foreign countries. Here to, foreign countries increased Hitler's prestige by bestowing honors upon him and by political concessions, thus providing some extremely strong stays for an initially weak corset of moral and especially foreign political authority. concessions, successes, and honors, which foreign countries had denied to the Weimar Republic, struggling as it was for political recognition. The failures of the Weimar Republic in the field of foreign policy considerably weakened Weimar democracy, whereas the way in which Hitler was treated strengthened his position and that of the Third Reich.

When the number of seats in the Reichstag of Hitler's party increased from 12 to 107, the whole world started to compete for his favor. If I had the time I could quote from the



press and from world literature for ours. But it is quite sufficient to read the Hearst press of that time or the Knickerbocker interviews.

Lloyd Goerge declared in 1936 (I quote):

"Hitler is one of the greatest of the many great men whom I have met in the course of my life. Hitler is the Goerge Washington of Germany."

I shall pass over in silence Lord Rothermere's eulogies in the Daily Mail. Even a man like Churchill praised Hitler in public, wished his country had a man like Hitler at a time of emergency, and advised the late State Secretary under Kaiser Wilhelm II, von Kuehlman, to join the NSDAP, and the Times wrote in March 1938 (I quote):

"It was one of the craziest mistakes of the peace treaties to prohibit the union between the Reich and Austria".

But today the Prosecution blames these men on the defendants' bench for having rejoiced at the realization of that ancient dream of the German Austrians and of the Germans in the Reich, the so-called "Anschluss", without having done anything to bring it about, in complete ignorance of the event or of the methods by which Hitler realized that dream. I could go on quoting from documents which are common knowledge the world over for hours.

What then was the main factor contributing to Hitler's success in the world and to the present misery of the world? Are the gentlemen upon the defendants' bench to be numbered especially among those who have played an important part or have incurred guilt within the scope of these motive powers which are the first cause of this world catastrophe? That is the question we have been examining for the past nine months. The answer to that question must in my opinion be in the negative, and it involves acquittal. What were the factors which

contributed in the last analysis to Hitler's successes is a question on which one could speak for many days. I shall limit myself to one quotation, which does not deal exhaustively with the problem, but does at any rate throw modicum of light upon it. Sumner Welles says in his book "The Time for Decision" Edition for the Armed Forces, page 38:

"It is strange now to recollect how lightly the rest of the world accepted this portentous development. It was only very rarely - and surprisingly enough least of all in the Foreign Offices of the Western democracies - that Hitler was seen to be the spearhead of the most evil force which had come out of Europe since the conclusion of the first World War. Business interests in every one of the democracies of Western Europe and of the new World welcomed Hitlerism as a barrier to the expansion of Communism. They saw in it an assurance that order and authority in

Germany would safeguard big business interests there)"

(End of quotation).

There were many people who thought like that in Germany, and there were very few indeed - and I suppose it was the same abroad, - who recognized at that early date that Hitler was anything but a bulwark against Bolshevism, but was on the contrary himself the prototype of a Bolshevik, at any rate in accordance with the Western world's conception of a Bolshevik, be that conception right or wrong.

As far as the alleged complicity of these defendants in Hitler's seizure of power and in the consolidation of that power is concerned the defense can afford to limit its refutation of those charges to this general evidence and to these arguments. I have dealt with the further accusation of an alliance between the defendants and Hitler's plans for aggressive war in the opening passages of my plea; my colleagues will submit further arguments on that subject for all defendants, including my client Schmidt. I should like to state in this connection, quite briefly, the following: I myself have no doubt at all that the last war was not a defensive war on Hitler's part, but that it was rather "his war" in the sense in which the Empress Eugenie used the phrase when she said: "c'est ma guerre". But I also know, from personal observation, that what Silens says on page 188 of the book quoted above is absolutely true. (I quote): "The nation wanted peace, the whole nation, workers or scholars, farmers or bankers, industrialists or high civil servants. The number of persons who knew what was the next point on the program e.g. the attack against Poland, was undoubtedly surprisingly small. The number of those who began to fear that Germany was embarking upon an irresponsible policy, was slightly larger. One of the directors of a large German bank said to me in private one week prior to the outbreak of war: we must avoid war in all circumstances. Frontier adjustments (that was the only problem which came to his mind at all)



do not justify bloodshed nowadays. That was the opinion of the vast majority, if not of all the leaders of German industry in responsible positions and of the highest civil servants and generals. Hitler betrayed his own country, when he unleashed the war in Europe."

(End of quotation.)

My client Schmitz was one of the many who simply could not imagine that Hitler would use for purposes of aggression, which were as frivolous as they were stupid, the war potential, inadequate as it is proved to have been for a major war in 1939, to the building up of which I.G. had of course contributed its due share, as a firm which was not chauvinist but patriotic, loyal to its country, but at the same time open and receptive to outside influences.

I have nothing to say to on behalf of my client with respect to the other points of the indictment; which I shall leave to the defense counsel concerned to refute, and I refer to the closing brief Your Honors, we have reached the closing stage of the biggest industrial trial of all times with a strong political background, in which the defendants have also been charged by the Prosecution with purely political crimes such as conspiracy aiming at aggressive war. In Schneider Document Book 12, submitted by my brother, there is a religious-moral-philosophical expert opinion of the highest quality, written by Pribilla, a member of the Society of Jesus, which is in keeping with the highest traditions of that order whose scientific training and knowledge of life have become proverbial. It contains the following passage: (I quote:)

"On re-reading my expert opinion it appears to me like a comment, expressed in the language of today, on a statement which a Pope who was a Saint and also a prominent politician recorded in an age of confusion and turbulence like ours, in the era of the migration of nations. Special importance has been attached to the statement, since it was included in the corpus juris canonici to throw light upon the path which the lawyers were to tread. Innocent I, 401 - 427, wrote

in his letter to the bishops of Macedonia on 13 December 1114:

"It oftens happens when whole nations or a large number of persons have erred, that many crimes go unpunished, because it is impossible on account of the numbers involved to bring everyone to justice. When that happens the past should be left to the judgment of God, but care should be taken to provide for the future with the greatest possible circumspection."

Pribilla then continues "our age ought to ponder the wisdom of that counsel."

Your Honors, we too live in an age, and have passed through times of "confusion and turbulence" which are unrivalled in the history of the world. The problems of criminal law confronting the judges of that time cannot have been more difficult to solve for the human mind in the 5th century than they are now. But we have chosen a different course, attempting to find out, by means of these trials, who were the guilty men. It is not my business to criticize that decision of your government influenced as it was mainly by political considerations. You will have noticed that my personal attitude to such an undertaking is one of extreme scepticism. As far as I am concerned, I have been persuaded by Innocent I. That personal conviction can only be strengthened by passages like the following which is taken from the book by Sumner Welles which has been quoted above on the post war period in America after the first world war, (I quote):

"Senate committees were indulging in long drawn-out sessions to prove that the country had been plunged into the first World War solely because of the machiavellian machinations of the arms manufacturers and of the international bankers."

There is, after all, nothing new under the sun. And the philosophic al maxim "history repeats itself", is, I am almost inclined to say,

unfortunately, true.

And so is the human tendency to seek scapegoats for all disasters of which the origins are complicated: and thus legends are born like the Prosecution legend of the "unholy Trinity", which has brought these men into the dock. When Hitler suffered reverses, the cry went up "the Jews are to blame". The place of the Jews as scapegoat has now been taken by the "bloated capitalists", which is the term of abuse now publicly bestowed upon the industrialist. Every age has its own scapegoats. Such human weakness becomes dangerous only when it affects the search for truth and thus the practical administration of the law and historical research. That is the reason why those wise people, the ancient Greeks, depicted Dike, the Goddess of Justice, with a bandage round her eyes, to protect her against the pernicious influence of contemporary prejudice.

Your Honors,

I have reached the end of my statement. - When at Spa after the end of the first world war the delegations of the Allied Powers and of Germany were discussing the question as to whether the so-called war criminals of the time should be brought to trial, an eminent British lawyer, a member of the British delegation, during a recess approached a friend of mine, who was a member of the German delegation, put his hand on his shoulder and reassured him with the following words:

"You know, it has nothing to do with any vindictiveness, it is only to punish those fellows who have really done wrong."

I am convinced that that is also the intention of this Tribunal:

"To punish only those fellows, who have really done wrong. But pray, Your Honors, bear in mind that the list of the war criminals at the time was headed by Kaiser Wilhelm II and Generalfeldmarschall von Hindenburg. Whatever has been or will be the verdict of history



upon the last German emperor as a person and as a politician, it never did regret and never will regret that a wise and chivalrous sovereign, the queen of the Netherlands and her government opposed the Allied demand that the Kaiser be surrendered, thus sparing the world the spectacle of the "Emperor in the dock." And as for Hindenburg, less than six years had passed when the ambassadors and envoys of those powers which six years previously would have him brought to trial, presented at a ceremonial reception, making their obeisance in accordance with the protocol, the credentials of their governments to "Reich President von Hindenburg". Times and opinions change rapidly.

But your verdict, your Honors, must stand amidst the changes of the times and of opinions like a *Rocher de brance*. Otherwise it will not have fulfilled its historic mission. May God bless your deliberations.

With reference to the evidence submitted on behalf of the defendant Schmitz, to our closing brief and to my final plea delivered today, I request you, Your Honors, to acquit my client, and to release him from jail.

THE PRESIDENT: The Tribunal will now hear Dr. von Metzler.

DR. VON METZLER: May it please the Tribunal:

After a hearing of nine months in a tense and agitated atmosphere which is usual in a court when a great issue is at stake, a gigantic trial is now entering on its final stage.

An incredibly vast amount of evidence on the activities of one of the biggest concerns in human history has been introduced by the prosecution. Although the defense since the beginning of this trial was and still is of the opinion that most of this evidence is irrelevant, nevertheless the defense had to cope with it and was compelled to introduce in their turn numerous documents and to call quite a considerable number of witnesses.

It is now the responsibility of this Honorable Tribunal, as we respectfully submit, to scrutinize all this evidence out before them, both as to its relevance and probative value. It is now up to Your Honors to direct the testimony of witnesses and affiants of all those human deficiencies as bias, prejudice and fear which quite naturally to some extent affect such testimony when feelings of political antagonism clash in a trial of such importance and a public opinion still conscious of the horrors of the last war exerts its pressure on all those who are giving evidence relating to those terrible years which for long as we all do hope will stand out as a warning to the living and future generations.

Counsel of both sides have been engaged in these past months in a bitter struggle tending to make out their cases. It is now up to Your Honors later on in closed Court to take control of the scales of Justice and if in any particular case they should hang anything like even, to throw into them some grains of mercy so as to give the defendant the benefit of a reasonable doubt.

In an effort to limit under the aspect of relevancy the vast amount of evidence produced by the Prosecution, the Defense have filed on the 17th December, 1947, a motion in which they asked for a finding of not

guilty under Count I and V of the indictment and with regard to the alleged acts of spoliation in Austria and Czechoslovakia on the ground of the irrelevancy of said evidence. So far this motion was successful only with respect to the alleged acts of spoliation in Austria and Czechoslovakia.

With your Honors' permission, and upon instruction by all defense counsel, I therefore shall state now once more briefly the position of the Defense as to the relevancy of said evidence under Count I and V. I am speaking insofar for all defendants and not only for the defendants Gajewski and Kaefliger.

To make myself quite clear I do not propose to deal with the probative value of the vast evidence put before Your Honors under Count I of the indictment both by the Prosecution and by the Defense. I therefore will not embark in a detailed scrutiny of said evidence. For, as we respectfully submit, it is the firm conviction of the Defense that from a legal point of view and on the basis of the principles developed by the IMT all of this evidence is irrelevant and does not bear out the charges under Count I and V. For this reason, in my humble opinion, it will suffice to view in a global manner the general categories of said evidence as grouped in the Trial Brief of the Prosecution bringing them in relation to the principles established by the IMT regarding crimes against peace.

At the outset it may be worth while to survey the situation as it has so far developed in respect to charges of crimes against peace in the Nuremberg Tribunal trying German industrialists. In the first case of this nature against Flick and others no such charge was raised by the Prosecution although the Flick-concern contributed in a substantial degree to the German rearmament and some of the defendants had leading positions in the industrial life of Germany.

In the Case versus Krupp and others, upon a similar motion of the Defense as filed in this Court, the Tribunal No. III in its session of 5th April 1948, ruled that the entire evidence offered by the Prosecution under the charge of crimes against peace and a conspiracy to this effect



was irrelevant and therefore acquitted all defendants of said charges. It is in our opinion rather significant that hereby a Nuremberg Tribunal has accepted the view point of the Defense regarding the inconsistency of such evidence with the principles developed in the IMT judgment notwithstanding the fact that the accused industrialists who were acquitted of said charges were the leaders of one of the most important armament-concerns of Germany which produced a substantial part of the weapons for the Nazi war machine before and after the outbreak of the war and which therefore according to a well-known slogan repeatedly used in various speeches of Hitler and his followers was styled the "Armoury of the Reich."

Before arguing the relevancy of the different groups of evidence offered by the Prosecution under Count I, I do not propose to go into the controversial question as to the legal aspect under which crimes against peace should be viewed. The controversy whether the rules governing this case should be derived from the German penal law or from a judicial system based either on the Continental law of Europe or on the all-embracing International law, this controversy can be completely left aside for the purpose of arguing the specific question forming the task of my address to Your Honors, namely, the relevancy of the Prosecution's evidence under Count I. For be it the German penal law or the Continental law of Europe or the International law as laid down in the IMT Charter of 8th August 1945, the decisive factor in assessing the criminal responsibility of the defendants under Count I and V are the principles developed by the IMT regarding crimes against peace as already argued in our motion of the 17th December 1947. Insofar the interpretation of the just mentioned Charter by the IMT is of vital importance and its judgment must be regarded in itself a contribution to the law applicable to crimes against peace, if we assume for argument's sake that the IMT judgment is a precedent.

There is a certain irony that the Prosecution whilst repeatedly referring in different parts of their Trial Brief to the IMT judgment as an important precedent, in arguing their case under Count I and V have entirely disregarded the principles established by the IMT as to crimes

was irrelevant and therefore acquitted all defendants of said charges. It is in our opinion rather significant that hereby a Nuremberg Tribunal has accepted the view point of the Defense regarding the inconsistency of such evidence with the principles developed in the IMT judgment notwithstanding the fact that the accused industrialists who were acquitted of said charges were the leaders of one of the most important armament-concerns of Germany which produced a substantial part of the weapons for the Nazi war machine before and after the outbreak of the war and which therefore according to a well-known slogan repeatedly used in various speeches of Hitler and his followers was styled the "Armoury of the Reich."

Before arguing the relevancy of the different groups of evidence offered by the Prosecution under Count I, I do not propose to go into the controversial question as to the legal aspect under which crimes against peace should be viewed. The controversy whether the rules governing this case should be derived from the German penal law or from a judicial system based either on the Continental law of Europe or on the all-embracing International law, this controversy can be completely left aside for the purpose of arguing the specific question forming the task of my address to Your Honors, namely, the relevancy of the Prosecution's evidence under Count I. For be it the German penal law or the Continental law of Europe or the International law as laid down in the IMT Charter of 8th August 1945, the decisive factor in assessing the criminal responsibility of the defendants under Count I and V are the principles developed by the IMT regarding crimes against peace as already argued in our motion of the 17th December 1947. Insofar the interpretation of the just mentioned Charter by the IMT is of vital importance and its judgment must be regarded in itself a contribution to the law applicable to crimes against peace, if we assume for argument's sake that the IMT judgment is a precedent.

There is a certain irony that the Prosecution whilst repeatedly referring in different parts of their Trial Brief to the IMT judgment as an important precedent, in arguing their case under Count I and V have entirely disregarded the principles established by the IMT as to crimes

against peace. The whole confusion in our opinion is due to the fact that originally the Prosecution laid too much stress on the provision of Art. II, para 2 f) of Control Council Law No. 10 saying, quote:

"Any person without regard to nationality or the capacity in which he acted, is deemed to have committed a crime as defined in para 1 of this Article, .....if he held a high position in the financial, industrial or economic life of any such country."

End quote.

As already argued in our motion, Control Council Law No. 10 has been issued pursuant to the LNY Charter in order to give effect to its provisions. Therefore the interpretation given by the IMT to said Charter rules also the provisions of Control Council Law No. 10, the latter having been issued already before the IMT passed its judgment.

Now the Prosecution, as already shown in our motion, apparently have abandoned their original theory that the above mentioned provision of Control Council Law No. 10 shifts the burden of proof concerning the knowledge of Hitler's aims to the defendants by saying on page 2 of their Preliminary Trial Brief, Part I, quote:

"This provision, we believe, is not intended to attach criminal guilt automatically to all holders of high positions."

End quote.

It should be noted in this connection that also the IMT judgment under certain circumstances recognizes the responsibility of business men for crimes against peace, I quote from Book I, p. 226:

"Hitler could not make aggressive war by himself. He has to have the cooperation of statesmen, military leaders, diplomats and business men. When they, with knowledge of his aims, gave him their cooperation, they made themselves party to the plan he had initiated."

End quote.

It is therefore the position of the Defense that the provision of art. II, para 2 f), of Control Council Law No. 10 is of no practical value in assessing the criminal responsibility of the defendants for the alleged crimes against peace. The Prosecution by abandoning their original theory that said provision shifts the burden of proof to the



defendants and by referring in their answer to the Defense motion on page 2 to the above quoted passage of the IMT judgment practically do not attach now any weight to said provisions as well.

It follows therefrom in the opinion of the Defense that the responsibility of the defendants for crimes against peace should be judged exclusively according to the principles laid down in the IMT judgment as to said crimes.

The whole problem therefore turns on the question what is "knowledge of Hitler's aims" in the meaning of the ...../.....

above mentioned passage of the IMT Judgment.

It is the position of the Defense that much time would have been saved in this trial if the Prosecution from the beginning would have paid more attention to this question, that is, to the state of mind required by the IMT for the commission of a crime against peace, before pouring out the incredibly vast amount of evidence on the degree of Farben's participation in the German rearmament. Undoubtedly, Farben contributed to a certain extent to the German armament just as well as all the other German firms engaged in the production of strategic materials did. Whether Farben's share in the German armament production in their field amounted to 20, 30, 50 or 70% is of no interest in this connection. The only thing that matters is: Were the defendants personally responsible for furthering Hitler's aggressive plans, in other words, did they have knowledge of Hitler's aggressive aims?

This question therefore should be considered first and above all before going into the details of Farben's participation in the strengthening of the German war potential. For to speak in the words of the IMT Judgment in Book No. 1 on page 308, quote:

".... But rearmament of itself is not criminal under the Charter."

End quote.

And in Book No. 1, on page 330, quote:

"His activities - namely those of the Minister for Armament and Munition Speer - in charge of German Armament production were in aid of the war effort in the same way that other productive enterprises aid in the waging of war; but the Tribunal is not prepared to find that such activities involve engaging in the common plan to wage aggressive war as charged under Count I or waging aggressive war as charged under Count II."

If therefore the key problem under Count I and V of the indictment is the question what is knowledge of Hitler's aims in the light of the principles developed by the IMT it may be worth while to state briefly those principles and to contrast with them the theory adopted by the Pro-

secution as to the state of mind of the defendants in their Preliminary Trial Brief. In the opinion of the Defense it will appear then that the Prosecution's theory is in flat contradiction to those principles laid down in the IMT Judgment and therefore cannot be accepted as a legally sound basis for assessing the criminal responsibility of these defendants.

Now the Prosecution argue that the IMT case is a different case, that the defendants there were governmental and military functionaries whereas the defendants before this Tribunal are business men.

To this the Defense would reply: The very fact that the defendants in the IMT case belonged to the highest governmental and military functionaries of the Nazi system permits but one conclusion, if justice is to be done to the defendants in this dock: In assessing the criminal responsibility of these defendants, who are ordinary business men, there can be undoubtedly adopted no stricter standard than in the case of the top representatives of the Nazi system who stood before the IMT. Does the Prosecution really contend that the defendants in this dock knew more of Hitler's aims than men like Schacht, von Papen, Speer, Frank, Bormann, having been members of the former Reich Cabinet, or Sauckel, Kaltenbrunner, von Schirach, Straicher and Fritzsche, having held governmental key positions in the former Reich, who all were acquitted by the IMT of the charge of having committed a crime against peace? It is unconceivable and yet the Prosecution apparently take this viewpoint which in our mind is inconsistent with the principles of justice and fairness.

The theory developed by the IMT as to what is knowledge of Hitler's aggressive aims in this connection is briefly the following :

As appears from the grounds of the acquittal of the IMT Defendants Schacht and Speer who both in a substantial degree were responsible for the German armament before and after the outbreak of the war, armament of itself is no crime against peace. Therefore no conclusion as to a knowledge



of Hitler's aggressive plans can be drawn from the fact of a participation in the German armament however substantial it may have been.

"Knowledge of Hitler's aggressive aims" according to the IMT Judgment is not identical with the so-called common knowledge of what Hitler might do or not. It is a special knowledge of specific aggressive plans which Hitler revealed to a certain limited circle of his closest advisers especially in four secret conferences which took place on 5th November, 1937, 23rd May 1939, 22nd August 1939, and 23rd November 1939. Therefore the above-mentioned defendants in the IMT case have been acquitted on the ground that they were not informed about those specific plans.

The reasons why the IMT is limiting in the just described manner the responsibility for crimes against peace may be derived from the following passage in book 1, page 256, quote:

"This discretion is a judicial one and does not permit arbitrary action but should be exercised in accordance with well-settled legal principles, one of the most important of which is that criminal guilt is personal and that mass punishments should be avoided."

In fact if the state of mind required for a crime against peace would be judged by such vague standards as adopted by the Prosecution there would hardly be any sensible limitation of the circle of men responsible for such crimes in Germany which would result in what according to the IMT Judgment should be avoided, namely, mass punishments. For even the Prosecution cannot deny that apart from I.G. Farben numerous other German firms and individuals contributed to the strengthening of the German war potential and that the knowledge that Germany was carrying out a rearmament program was not limited to the defendants in this dock.

In contradiction to this clear and precise definition of what is "Knowledge of Hitler's aggressive plans" adopted by the IMT, the theory of the Prosecution on the state of mind required for a crime against

peace is utterly vague and inconsistent with the above-described principles of the I/T Judgment. I quote from page 19 of the Preliminary Trial Brief of the Prosecution, Part I:

"This is the knowledge that such military power will be used for the purpose of carrying out a national policy of aggrandizement to take from the peoples of other countries their land, their property, or their personal freedoms. It is sufficient if there exists the belief that although actual force will be resorted to if necessary, such purpose will be accomplished by using the military power merely as a threat.

And it is not essential that the defendants know precisely which country will be the first victim or the exact time that the property rights and personal freedoms of the peoples of any particular country will be under attack. It is sufficient that the defendants know that the military power will be used under the circumstances indicated for the purpose of taking away from peoples of other countries that which belongs to them."

Now the question which, as I respectfully submit, Your Honors will have to ask yourselves later on in closed Court is: Can there be any reasonable doubt that all defendants acquitted by the I/T of the charge of a crime against peace, taking into consideration their position under the Nazi regime, had at least the vague amount of knowledge which according to the Prosecution is sufficient to convict a person under such charge. It is the position of the Defense that there can be no such doubt and, that therefore - if the ends of justice are to be met - the state of mind of defendants in this case cannot be judged by the just-mentioned theory of the Prosecution.

Furthermore, there can be no doubt that this theory, if accepted would inevitably result in a mass punishment which is to be avoided according to the I/T Judgment.

All this becomes particularly clear by following the line of argument adopted by the Prosecution in their Preliminary Trial Brief, Part I, under the heading "state of mind". On page 78 and following the Prosecution refer to the Nazi program and to the book of Hitler "Mein Kampf". On page 89 and following they review the political events in Germany from

1932 up to the outbreak of the war, saying on page 77, I quote:

"When viewed in the light of the political events occurring during that period, there can be no doubt as to the state of mind of these defendants."

And on page 89 the Prosecution goes on to say, quote:

"But making every allowance for human credulity and indifference, the conclusion is inescapable that, long before the attack on Poland and well in advance of the Austrian and Czechoslovakian invasion, all highly placed officials of the Third Reich, and influential men who did business with them and had access to official information and opinion, must have known that the Nazi program of aggrandizement would be carried out even if it meant war although they may not have known just when or how it would first break out."

Finally, on page 99, the Prosecution say, quote:

The frenzied pace of the German armament effort of the recent months and the widely publicized objectives of the Nazi party made the future only too clear. If one may concede room for doubt before 1939, after the Wehrmacht's entry into Prague, no one could longer doubt that the Third Reich was ready for war."



In applying this line of argument of the Prosecution to the defendants who were acquitted by the IMT of the charge of a crime against peace, there can be not the slightest doubt, in my humble opinion, that all of these men under the theory of the Prosecution in this case should have been convicted because all of them undoubtedly had the knowledge of the political events dealt with in the above-mentioned part of the Prosecution's Trial Brief. And it furthermore should be clear that on the basis of the above-mentioned observations of the Prosecution their theory would inevitably result in mass punishments.

It is the position of the Defense therefore that the theory of the Prosecution on the state of mind for a crime against peace and their line of argument followed under this heading of their Trial Brief is wrong and legally unsound for the purpose of assessing the criminal responsibility of these defendants.

It is most interesting to note that apparently the Prosecution itself does not feel sure as to the soundness of its theory because whilst giving in its Preliminary Trial Brief prominence to the publicity given to the program and aims of the Hitler movement, the Prosecution in their answer to the Defense motion of 17th December 1947 in para. 10 make the following significant statement, quote:

"It is sufficient to note here that the Prosecution does not contend that the wide publicity given to the program and aims of the Hitler movement over a period of years is enough in itself to establish beyond a reasonable doubt that the average person within Germany had the required knowledge. And the evidence must establish more than knowledge of the aggressive program and aims of the Nazi government and belief that there was a possibility that force would be used to carry out the policy of aggrandizement."

I would say that this rather vacillating position of the Prosecution as to what is essential in order to prove knowledge of Hitler's aggressive aims speaks for itself.

Now, the Prosecution argue that the defendants were not just ordinary business men but held official positions in the German

administration. Therefore, in the view of the Prosecution, the defendants on account of these positions had more knowledge of Hitler's aims than an ordinary business man. However the Prosecution failed to offer any proof on this allegation which is as vague as the other parts of their theory on the state of mind of the defendants. Moreover who could possibly deny that the official and semi-official positions held by some of the defendants in the administration of the German economy, including the position of the defendant Krauch within the framework of the Four Year Plan, did not come up to the level of those held by the IMT defendants who were acquitted of the charge of a crime against peace.

In addition the Prosecution argue that after the outbreak of the war on the 1st September 1939, it appeared to be beyond question that the defendants knew of the aggressive character of this war. Again the Prosecution has not offered any evidence bearing out this allegation and once more the position of the Prosecution insofar as in flat contradiction to the principles laid down in the IMT judgment. I may refer in this connection once more to the acquittal of the IMT defendant Speer, the responsible Minister for Armament and Munition, and to that part of the grounds of his acquittal to which I took the liberty to allude a few moments ago. If the IMT did not consider the activities of the defendant Speer in spite of the fact that he was in charge of the entire German armament a crime against peace, then it should be clear that those defendants who did not hold a position equal to that of Speer cannot possibly be implicated on the ground that I.G. Farben's production after the outbreak of the war was in furthering the military strength of Germany. If the IMT acquitted the defendant Speer then it certainly did not assume that he had a definite knowledge of the aggressive character of the war after its outbreak.

Now, the Prosecution argue that Speer became Minister for Armament and Munition some time after all the acts of aggression by

Hitler had been started and were well under way. However this statement by the Prosecution does not take away from the force of the argument of the Defense. The crime of participating in the waging of an aggressive war continues until the end of such war. Therefore it cannot make any difference whether the actual aggression had already started and was well under way when Speer became responsible Minister for the German armament.

In addition I may point out that, with the exception perhaps of the defendant Schacht, all the IMT defendants acquitted of the charge of a crime against peace held important administrative positions also after the outbreak of the war and in spite of this fact were not found guilty of having waged an aggressive war.

The Prosecution has argued furthermore that the acquitted IMT defendants did not participate in the same degree in the preparation and waging of the aggressive war as those defendants did and that the insignificant degree of such participation was the reason for their acquittal.

To this the Defense would reply only: If the Prosecution contend that any of those defendants participated in a higher degree in the preparation and waging of the aggressive war than a former member of the Reich Cabinet or a man who held an administrative key-position under the Nazi-system which, as the Prosecution say, was in all its parts directed towards carrying out a national policy of aggrandizement, then such theory clearly shows that the Prosecution has no knowledge at all what influence, as compared with even a prominent business man, a top-ranking governmental official had and exercised in the Third Reich in synchronizing the efforts and activities of the German nation with the aims of the Nazi Policy.

Summarizing their above said arguments, the Defense therefore would say that in order to establish a guilty mind on the part of the defendants under Count I and V of the indictment, the Prosecution



must prove in accordance with the principles developed by the IMT that each of the defendants was informed about specific aggressive plans of Hitler which could not leave any doubt in his mind as to the aggressive character of this war. Only in such case the proof offered by the Prosecution would be beyond any reasonable doubt, and the Prosecution would have made out their case.

In this connection the Defense would point out that of course it is not necessary to establish that any of the defendants took part in those secret meetings at which Hitler revealed his plans of aggression to his closest advisers. In order to establish a guilty mind on the part of the defendants, it would be sufficient to prove that by some way or other they were informed of those plans.

Undoubtedly the Prosecution has not offered any direct evidence bearing out such knowledge on the part of the defendants.

That the political events and the knowledge thereof mentioned under the heading "state of mind" of the Prosecution's Preliminary Trial Brief, Part I, do not constitute such a proof has been already shown.

The only question therefore to be dealt with is whether the bulk of evidence introduced by the Prosecution on Farben's activities before and after the outbreak of the war warrant a conclusion beyond any reasonable doubt that the defendants had the above-mentioned knowledge of Hitler's aggressive plans, in other words, whether the proof offered by the Prosecution can be considered a circumstantial evidence beyond any reasonable doubt of such knowledge.

All of us are aware of a spirit of the law of civilized nations which finds its expression in certain principles recognized throughout the entire civilized world. Among these principles are the following rules concerning the proof of a defendant's guilt in a criminal trial?

One: There can be no conviction without proof of personal guilt.

Two: Such guilt must be proved beyond a reasonable doubt.

Three: The presumption of innocence follows each defendant throughout the trial.

Four: The burden of proof is at all times upon the Prosecution.

Five: If from credible evidence two reasonable inferences may be drawn, one of guilt and the other of innocence, the latter must be taken.

It is the position of the Defense that under the just stated rules the entire evidence offered by the Prosecution on Farben's activities does not constitute a circumstantial evidence bearing out beyond reasonable doubt the contention that any of the defendants had knowledge of specific aggressive plans of Hitler.

Therefore, as has been already pointed out at the beginning of my arguments, it will suffice to deal in a global manner with the different categories of the Prosecution's evidence on Farben's activities. I will embark now on this task.

There is first of all the alleged financial support of Hitler and the Nazi Party by Farben. It is well known that the entire German industry as well as numerous German citizens made contributions to various agencies of the Nazi party and that those contributions were part of a system worked out and organized by that party. To derive therefrom a knowledge of Hitler's aggressive plans is, therefore, out of discussion.

Next comes the vast amount of evidence dealing with the alleged cooperation of Farben with the German Army. As to this group of evidence as well as the other groups dealing with the creating and equipping of the Nazi military machine, the Defense would respectfully invite the Tribunal to bear in mind that all activities of this nature nowadays on account of the knowledge which we now have of those events might appear in a different light. It is therefore essential to put

oneself in the position of an observer living before the outbreak of the war before judging any activities which took place at that time.

And there is another point which in this connection is of utmost importance and which, in the opinion of the Defense, has been utterly neglected by the Prosecution. It does not suffice that the Prosecution prove a knowledge by the defendants that Hitler was preparing for a war, the Prosecution has to establish on the part of the defendants the knowledge of Hitler preparing an aggressive war. It is the position of the Defense that a great deal of the confusion about the relevancy of the Prosecution's evidence under Count I has to be attributed to the fact that the Prosecution when presenting their evidence did not pay enough attention to this point.

On the basis of these observations the evidence presented by the Prosecution under the heading "Cooperation with the Wehrmacht" does not prove beyond any reasonable doubt that any of the defendants had knowledge of specific aggressive plans of Hitler. The creation and operating of the Vermittlungsstelle W



— on which the Prosecution spent so much time in presenting their evidence — the alleged cooperation between Farben and the army in the field of inventions and research, the conduct of map exercise and war games, the setting-up of mobilization plans, the conclusion of war delivery contracts, all these activities do not warrant a conclusion beyond any reasonable doubt that any of the defendants knew that an aggressive war was at hand. These activities which besides were not confined to I.G. Farben alone but by governmental decrees were spread over the entire German industry can just as well be seen under the aspect of either preparing for a defensive war or of giving Germany a more solid position in the sphere of foreign politics in the light of the well-known political theory: "balance of power".

Next comes the evidence offered under the heading "Four Year Plan and Economic Mobilization of Germany for War". Again the same can be said as explained above with regard to the evidence produced on the alleged cooperation of Farben with the Wehrmacht. None of the evidence offered with respect to these activities of the defendants within the framework of the Four Year Plan bears out beyond any reasonable doubt the allegation that any of the defendants had knowledge of the specific aggressive plans of Hitler. The existence and operation of the Four Year Plan were known to the German public. The program of autarky had been discussed at that time in numerous newspaper articles and public speeches. Even if some of the defendants really had some more intimate knowledge of the details of this plan, as far as their field of production was concerned, this does not warrant beyond any reasonable doubt the conclusion that they knew the Four Year Plan being carried out in preparation of an aggressive war.

The same holds true with regard to the incredibly vast amount of evidence produced by the Prosecution under the heading "Creating and Equipping the Nazi Military Machine".

On page 26 of their Preliminary Trial Brief, Part I, the Prosecution state the following, quote:

"It will be seen that by virtue of the nature of the products manufactured and the fact that the contracts and negotiations were mainly with the military, the defendants knew their production was to build up the Nazi war machine. In addition, the quantities of production and the circumstances surrounding such production, especially the timing of the consecutive accelerations in production planning and the fact that the military might Germany was building up far exceeded that of her neighbors, were such that the defendants must also have known that the war machine was intended to carry out the notorious national policy of aggrandizement."

End quote.

To this the Defense would reply that the Prosecution has not offered any evidence bearing out the allegation that any of the defendants knew beyond the special field of the production, of which he was in charge, any data enabling him to survey the timing, acceleration and extent of the entire German production of strategic materials. Only in this case the defendants could have had the knowledge to repeat the Prosecution's words: "of the fact that the military might Germany was building up far exceeded that of her neighbors." The fact that, in reality, the military might of Germany did not by far exceed that of her neighbors, can therefore be left aside here.

Neither has the allegation of the Prosecution been proved, that the dealings in all these products of I.G. Farben mentioned on page 27 and page 41 of their Preliminary Trial Brief, Part I, were mainly with the military.

The Defense therefore would say that the rise of production of strategic materials all over Germany does not warrant any safe conclusion as to a guilty mind on the part of the defendants under Count I and V of the indictment.

The same observations apply just as well to the erection of the so-called stand-by plants and the stockpiling of strategic materials and they are equally valid as to the evidence produced by the Prosecution under the heading "Use of International Agreements to Weaken Germany's Potential Enemies". Granting that the alleged activities of Farben in this field really took place as described by the Prosecution, this again would not justify a conclusion beyond any reasonable doubt that

the particular defendants connected therewith by the Prosecution knew that these measures were taken in preparation of an aggressive war. For it is an universally known fact that at times of political tension stand-by plants are being erected, strategic materials stockpiled and the exchange of technical informations between the industries of different countries is being subjected to certain restrictions. How could the defendants know that these measures ordered by the German government were steps on the road leading to an aggressive war and not merely measures of precaution in case of a defensive war.

The same holds true with regard to the evidence presented by the Prosecution under the heading "Propaganda, Intelligence, and Espionage Activities". If the knowledge of the Nazi program even in the view of the Prosecution is not equivalent to the knowledge of Hitler's aggressive plans required for a conviction on a charge of a crime against peace, how can then a propaganda giving publicity to the Nazi program abroad justify any safe conclusion as to a guilty mind on the part of the defendants under Count I and V. Nor can such a conclusion be drawn from any of the alleged intelligence and espionage activities on the part of any of the defendants. These activities fall within the same category as the equipping of the Nazi war machine and therefore cannot be viewed exclusively in the light of the preparation of an aggressive war.

As to the evidence offered by the Prosecution under the heading "Protecting Hitler's Empire and Expanding it through Plunder and Slavery as Part of the Preparation for and Waging of Aggressive Wars and Invasions", the entire evidence referring to the alleged camouflage activities of I.G. just as well does not justify the conclusion as to a knowledge of the defendants of Hitler's aggressive plans. Such activities, granting that they really took place, must be considered in the light of the political tension at the time of the Sudeten crisis when according to the Prosecution's view they were initiated. Therefore, they can just as well be understood as measures of precaution in case



that Germany should be involved in a defensive war.

Neither can the evidence offered by the Prosecution on the alleged acts of plunder and spoliation be considered a proof of the knowledge on the part of any of the defendants of Hitler's aggressive plans for the same reasons stated above with regard to the production of war material by Farben after the outbreak of the war. On page 71 of the Preliminary Trial Brief, Part I, the Prosecution say that said acts have been committed "in furtherance of the government program of integrating these industries into the German economy and using the resources of the conquered countries in waging each aggression and preparing for the next". Therefore the alleged acts of spoliation even if they really should have taken place, in this connection, namely, under Count I of the indictment, must be considered in the same light as the production of war material after the outbreak of the war in furthering Germany's war potential. If the IMT in this respect acquitted the defendant Speer as the responsible Minister for Armament and Munition on the ground that his activities as well as the production of war material by the German industry do not constitute a crime against peace, then the same must be said with regard to the alleged acts of spoliation having been committed by Farben in the Prosecution's view for the same purpose, namely, in furtherance of the German war potential.

The same applies to the last group of evidence offered by the Prosecution under Count I, namely the alleged participation by Farben in the so-called slave labor program. The purpose of these alleged activities is described by the Prosecution on page 72 of their Preliminary Trial Brief, part I, as follows, quote:

"The use of slave labor by Farben also had this double aspect. It is not only enabled Farben to erect new plants and make huge profits, by increasing production, but the very erection of such plants and the increase of such production constituted a vital part of the preparation for and the waging of aggressions."

End quote.

Therefore the above observations made as to the alleged acts of spoliation apply also to Farben's alleged participation in the slave

labor program.

In reviewing therefore the entire evidence presented by the Prosecution under Count I, in the opinion of the Defense there can be but one conclusion that none of this evidence establishes beyond any reasonable doubt that the defendants had knowledge of Hitler's aggressive aims in the meaning of the IMT judgment.

Mr. President, I am starting now on a new section. Would this be a convenient time for the recess?

THE PRESIDENT: The Tribunal will recess until 9:00 o'clock tomorrow morning.

(The Tribunal adjourned until 0900 hours, 3 June 1948.)

Official Transcript of the American Military  
Tribunal No. VI in the matter of the United  
States of America against Carl Krauch, et al,  
defendants, sitting in Nurnberg, Germany, on  
3 June 1948, Justice Curtis G. Shako, presiding.

THE MARSHAL: The Honorable, the Judges of Military Tribunal VI.  
Military Tribunal VI is now in session. God save the United States  
of America and this Honorable Tribunal.

There will be order in the court.

THE PRESIDENT: Make your report, Mr. Marshal.

THE MARSHAL: May it please your Honors, all defendants are present  
in Court.

THE PRESIDENT: Dr. von Mettler, you may continue with your argument.

DR. VON METZLER: May it please the Tribunal.

I may repeat my last sentence.

In reviewing therefore the entire evidence presented by the Prosecu-  
tion under Count I, in the opinion of the defense there can be but one  
conclusion that none of this evidence establishes beyond any reasonable  
doubt that the defendants had knowledge of Hitler's aggressive aims in the  
meaning of the IMT Judgment.

On the basis of the above observations all of the defendants should  
be likewise acquitted of Count V of the indictment as we respectfully sub-  
mit. For if the prosecution has not established beyond any reasonable  
doubt a knowledge on the part of the defendants of Hitler's aggressive  
plans, then as a matter of course a conspiracy to this end is out of dis-  
cussion. It is very significant in this connection that the prosecution  
has not offered any direct evidence on this alleged conspiracy. In their  
Preliminary Trial Brief, Part V, not a single exhibit is mentioned. The  
prosecution only argue in a general and rather vague manner by making re-  
ference to decisions of the US Supreme Court in cases which have nothing  
to do with this case. Again the prosecution entirely disregard what the



IMT Judgment stated as to the prerequisites for a charge of conspiracy in this respect. I may refer to the following quotation from the IMT Judgment, book No. I, page 225:

"The prosecution says; in effect, that any significant participation in the affairs of the Nazi Party or Government is evidence of a participation in a conspiracy that is in itself criminal. Conspiracy is not defined in the Charter. But in the opinion of the Tribunal the conspiracy must be clearly outlined in its criminal purpose. It must not be too far removed from the time of decision and of action. The planning, to be criminal, must not rest merely on the declarations of a party program, such as are found in the 25 points of the Nazi Party, announced in 1920, or the political affirmations expressed in "Mein Kampf" in later years. The Tribunal must examine whether a concrete plan to wage war existed and determine the participants in that concrete plan."

"But the evidence establishes with certainty the existence of many separate plans rather than a conspiracy embracing them all."

End quote.

This argumentation in the IMT Judgment follows the same line as the view-point taken by the IMT on the prerequisites of a knowledge of Hitler's aggressive aims. Again the IMT Requires the proof of concrete specific facts, namely the participation in a concrete plan which is not too far removed from its execution. There is no such evidence offered by the Prosecution. In this connection I may refer to the decision of the US Supreme Court in the case "United States versus Falcone" quoted in the Prosecution's Preliminary Trial Brief, Part V, page 5 and following, according to which the Prosecution's proof in a conspiracy case apart from the conspirator's knowledge of the unlawful act of the other conspirator must include the proof of the intent to further, promote, and cooperate in said unlawful act. Again the Prosecution has offered no evidence on such intent on the part of the defendants.

In concluding my arguments on this subject I may quote from the grounds of the just mentioned decision the following significant passage which can be found in the Preliminary Trial Brief of the Prosecution, Part V, page 5

and following quote:

"This difference is important for two purposes. One is for making certain that the seller knows the buyer's intended illegal use. The other is to show that by the sale he intends to further, promote and cooperate in it. This intent, when given effect by overt act, is the gist of conspiracy. While it is not identical with mere knowledge that another purposes unlawful action, it is not unrelated to such knowledge. Without the knowledge, the intent cannot exist. Furthermore, to establish the intent, the evidence of knowledge must be clear, not equivocal. This because charges of conspiracy are not to be made out by piling inference upon inference, thus fashioning what, in that case, was called a dragnet to draw in all substantive crimes."

End quote.

This is just what the Prosecution tried to do in this case when presenting their evidence. They were piling inference upon inference without establishing a clear and unequivocal evidence neither of the knowledge on the part of the defendants of specific aggressive plans of Hitler nor of an intent to further, promote and cooperate in such plans. In flat contradiction to the principles developed in the IMT Judgment, the Prosecution advanced a vague and ambiguous theory, they compiled a mass of irrelevant evidence, thus obscuring the real issue under these counts of their indictment as it has been outlined - I may say - with wise foresight by the IMT and therefore all their endeavors - however elaborate they may be - are doomed to failure.

On these grounds I therefore respectfully move this Honorable Tribunal for an

acquittal of the defendants of the charges  
under Count I and V of the indictment.

I shall pass on now with your Honors permission to another general subject on which I am addressing this Tribunal again on behalf of all defendants, that is:

The general theory of the responsibility of the defendants  
for the alleged crimes.

I think I am justified in saying that this is the key problem of this trial and that the aspect under which this problem is viewed is decisive in assessing the personal responsibility of each defendant for any of the specific crimes alleged under the different counts of the Indictment. Therefore the question which - as I respectfully submit - your Honors will have to ask yourselves later on in closed Court, namely which general theory of responsibility constitutes a legally sound basis, is of vital importance and should be considered most scrupulously.

In my Opening Statement For Paul Haefliger I said that, in reviewing the incredibly vast amount of evidence offered by the Prosecution on Farbon's activities, there is one point which strikes me particularly: It is the incredibly small amount of evidence which the Prosecution has introduced on the personal responsibility of each defendant. At the time when I submitted this Opening Statement I was not yet familiar with Part VI of the Prosecution's Preliminary Trial Brief dealing with their general theory of responsibility. I therefore was particularly curious to learn whether this part of the Prosecution's Brief confirmed or upset my general impression which I outlined in the just mentioned passage of my Opening Statement. And I may say that, after having read this part of the Prosecution's Brief, I was more than ever convinced that the Prosecution utterly failed in discharging the burden of proof which is upon them in this trial.

As already pointed out in this address it is up to the Prosecution to prove beyond any reasonable doubt the personal guilt of each defendant.

It is one of the leading principles of criminal law in all civilized countries that - as the IMT put it - criminal guilt is personal and that mass punishments must be avoided. Under this fundamental principle, which the IMT recognized even with regard to the Criminal Organizations dealt with in



their judgment, it should be indisputably clear that in criminal law there is no collective guilt or responsibility deriving from the membership in a certain organization or body as for instance the board of directors of a company. It may be pointed out in this connection, that the IMT, by acquitting the former Reich Cabinet, being the incarnation of the political will of the German people, of the charge of a conspiracy, to commit crimes against peace, recognized this fact.

And yet the Prosecution, in advancing their general theory of responsibility in Part VI of their Preliminary Trial Brief, base their arguments on the assumption of a collective responsibility of all defendants resulting from their membership in the Farben-Vorstand respectively other boards. Thus the Prosecution substitute the burden of proof, which is upon them, of a personal guilt of each individual defendant, by submitting a theory which is as vague, unsupported by facts and inconsistent with the principles of justice and fairness as their theory regarding the state of mind of the defendants under Count I of the Indictment. Therefore also this theory of a collective responsibility of the defendants, deriving from their capacity as members of the Farben-Vorstand, which apparently is intended to serve as a dragnet to draw in all defendants, is doomed to failure.

At the beginning of Part VI of their Brief, the Prosecution argue that each of the defendants, apart from his industrial positions, held high political, civil and military positions in Germany and that by using these positions and their personal influence, the defendants participated in the crimes charged in Counts I, II, III and V of the Indictment. This allegation which I have dealt with already in my arguments under Count I of the Indictment, is not supported by any proof. To begin with, there is no proof of high political, civil and military positions. The Prosecution in this respect refer to their Document Books 11 and 66 containing the affidavits

of all defendants on their positions. In reviewing these positions one cannot but admit that the Prosecution, by maintaining that the defendants held "high" political, civil and military positions, - to put it mildly - grossly overshoot the mark. I would respectfully invite your Honors to compare the positions held, for instance, by the defendants of the IMT trial with these official or semi-official positions of these defendants, which in most of the cases amounted to nothing more than a membership in the staff of one of the so-called Economic Groups or other administrative bodies of a medium level, which had no political or military character at all, in order to understand properly the true significance of the influence which the defendants by virtue of these positions were able to exercise with a view of - as the Prosecution put it - "preparing Germany for war" and of participating in "the waging of war by Germany". And it is rather amusing to observe that the Prosecution itself admit the weakness of their position by saying on page 2 of Part VI of their Trial Brief, quote:

"We do not propose at this point to review the significance of each position held by each defendant. It is sufficient to note here that these positions, listed in Appendix "A" of the Indictment, enabled the defendants to participate in a substantial way in many activities vital to preparing Germany for war and for the waging of war by Germany during a period of twelve long years."

End quote.

Unfortunately the Defense cannot find any other passage neither in the Trial Brief nor in the Document Books of the

Prosecution, in which the significance of said positions of each defendant in connection with the alleged crimes is reviewed. The document books 11 and 66 of the Prosecution by no means speak for themselves,

On the basis of these observations the only possible conclusion therefore is that the Prosecution utterly failed to prove beyond reasonable doubt the personal guilt of each defendant by referring to those positions held by him. I do not wish to be hard on the Prosecution, but I must say that their line of argument under "A" of Part VI of their Preliminary Trial Brief is a classical example of a complete misconception of the burden of proof, which is upon the Prosecution regarding the guilt of a defendant in a criminal trial.

The same holds true when we come to consider the arguments of the Prosecution under "B" of Part VI of their Preliminary Trial Brief regarding the membership in the Vorstand.

On the basis of the above said observations that criminal guilt is personal and that therefore there does not exist a collective criminal responsibility, the fact of having been a member of the Farben-Vorstand or of any of its committees alone never can be regarded a sufficient proof of the criminal guilt of any of such members under the different Counts of the Indictment. And yet the Prosecution maintain this.

In substance the Prosecution's theory in this respect is the following:

The Vorstand of Farben is alleged to have initiated, approved and ratified a policy and a program, the execution of which extended over a long period of years and which consisted of

- (a) preparing Germany for an aggressive war and participating in the waging of such war by Germany;
- (b) plundering the chemical industries throughout Europe;



(c) using slave labor;

(d) ill-treatment of slave laborers, including medical experiments on concentration camp inmates and the furnishing of poison gas for their extermination.

In other words, the Prosecution alleges that the Farben-Vorstand initiated, approved and ratified a general policy covering all crimes charged under the Counts I, II and III of the Indictment, and that all defendants joined in such initiating and approving on account of their membership in said Vorstand.

Then the Prosecution goes on to say on page 3 of Part VI of their Brief quote:

"The fact that any individual Vorstand-member may not have known of some particular detail involved in the carrying out of a program which he had initiated, supported or approved, is unimportant. It is certainly not the position of the Prosecution that, in a giant concern of this size, any person could know all the detailed ramifications of the execution of all adopted policies. It may be that on occasion a specific act was taken in the carrying out of a policy approved by the Vorstand which was not contemplated in the original program. But, where, as here, the execution of any specific program extends over a relatively long period of time, those who are responsible for initiating that program and for carrying it out cannot claim that they did not know what was happening during its execution... Those persons who were legally charged with running, and who did run, this concern, cannot escape liability, by any alleged failure to have found out the main consequences of the policies they set in motion or subsequently approved."

End quote.

On page 9 of their respective Brief the Prosecution goes on to say, quote:

"The fact that a defendant was a member of the Vorstand of Farben is of vital significance in two respects. In the first place, it meant that he, as one of the persons on the managing board of directors, substantially participated in the activities carried on through the instrumentality of Farben; in the second place, it meant that he knew of any matter of any importance in the affairs of Farben, even though he may not have known (although he could have found out with the slightest investigation) of many details in connection with the administration of such matters."

End quote.

It is therefore the position of the Prosecution that, in order to convict the defendants under the various Counts of the Indictment, it is not necessary to prove that each defendant had knowledge of each specific crime covered by the Indictment respectively of any details of such crime, nor that each defendant actively participated in the commission of such crime, because all these alleged crimes were committed - as the Prosecution put it - in execution of an alleged general policy and program initiated and approved by the defendants. Accordingly the Prosecution do not attach any weight to the fact that in the Indictment certain individual defendants were connected with certain specific activities charged under Count I, II and III and allegedly took an active part therein.

In reviewing this theory of the Prosecution, which I just took the liberty to outline, there can be, in my humble opinion, not the slightest doubt, that the Prosecution's position is in flat contradiction to the above mentioned principle that criminal guilt is personal, that there exists no collective criminal guilt and that therefore it is up to the Prosecution to prove beyond any reasonable doubt on the part of each defendant his personal participation in and knowledge of each specific crime charged under the different Counts of the Indictment.

The following analysis of the Prosecution's theory will show the correctness of this conclusion.

To begin with, the Prosecution has failed to prove the basis of their theory, namely the initiating, approving and ratifying of the alleged general policy of the Vorstand covering the alleged crimes under the different Counts of the Indictment.

In the first part of my address dealing with Count I of the Indictment, I have already pointed out that the evidence offered by the Prosecution does not bear out the allegation that the Farben-Vorstand initiated, ap-

proved and ratified a policy or program to commit crimes against peace.

The same holds true with regard to Count II and III. The Prosecution has not introduced any evidence proving beyond reasonable doubt that the Vorstand of Farben initiated, approved and ratified a policy and program of plundering the chemical industries throughout Europe, of using slave labor, ill-treating slave laborers, carrying out medical experiments on concentration camp inmates and furnishing poison gas for their extermination.

Therefore the very basis of the Prosecution's conception in substance is not a theory of criminal guilt under Count I, II and III of the Indictment, but - in the form advanced by the Prosecution - rather a theory of criminal guilt under the conspiracy charge. This becomes sufficiently clear by referring to the observations made by the prosecution on page 3 and 4 of Part V of their preliminary Trial Brief dealing with the Common Plan or Conspiracy, quote:

"The nature of this conspiracy is that these defendants over a period of years, planned and conspired among themselves and with other persons to carry on the activities described in parts I, II and III of this Brief ..... These activities were not isolated acts of individual defendants. On the contrary, such activities were part of a plan and program which had its roots and took shape at meetings and conferences of the defendants over a period of years - in the Vorstand, in the Technical Committee, in the Commercial Committee; in other committees, and agencies of Farben; in the exchange of correspondence, memoranda and reports; and through less formal meetings in the minds of the defendants."

End quote.

These observations of the Prosecution made in support of their conspiracy charge correspond in substance to those forming the basis of their general theory of responsibility advanced in Part VI of their Preliminary Trial Brief, which I quoted a few minutes ago.

Now as to the conspiracy charge regarding crimes against peace, it has been shown already that the evidence offered by the Prosecution does not



support this charge.

As to the crimes charged under Count II and III of the Indictment, according to the ruling of this Tribunal no conspiracy can be assumed from a legal point of view.

It follows therefrom that again the entire basis of the Prosecution's theory of the responsibility of the defendants arising from the alleged original policy of the Farben-Vorstand is upset as the conspiracy charge with reference to Count I of the Indictment has not been proved, and a conspiracy charge as to Count II and III of the Indictment legally does not exist.

Apart from these general view-points which clearly show the utter unsoundness of the Prosecution's theory, the defense would respectfully invite now your Honors to consider the following facts in the light of which it will appear, that the only legally sound approach to the general problem of responsibility is on the basis of dividing the responsibility among the different members of the Vorstand in accordance with the special tasks, which were assigned to them, in other words, on the basis of the principle of decentralization, which was adopted within the framework of Farben and which has been repeatedly quoted in the course of this trial.

As I pointed out already in my Opening Statement for the defendant Haefliger, the actual facts of the position of a defendant and the actual scope of his tasks alone count when assessing his criminal responsibility for activities which fell either within or outside the scope of the business of which he was in charge. It is the position of the Defense that, as far as criminal law is concerned, only a conception of responsibility based on such facts can be considered a legally sound theory to start on in assessing the guilt of a defendant. On the basis of the evidence introduced by the Defense these facts are the following:

I.G. Farben - the English translation of "I.G.," being "community of interests" - originated from a merger of several independent chemical firms of major importance. This merger came about with reluctance, since the managing directors of the various firms were afraid of losing their independence and autonomy. These misgivings were taken into consideration when framing the organization of the new concern I.G. Farben. The result was, that on the one hand all the managing directors of the various firms were taken over as members of the Vorstand of the new concern, and on the other hand the principle of decentralization was adopted within the organization of the new concern, in order to preserve as much as it was possible under the circumstances the former independence and autonomy of those managing directors, who were in charge of the firms which were merged into I.G. Farben. This resulted in a far-reaching dividing of working-fields and of responsibilities among the different Vorstand-members, who in the special field, which they were in charge of, acted in a manner not dependant on the consent and cooperation of the other Vorstand-members as far as no particularly important matters were concerned, which went beyond the framework of the ordinary business conducted by them. Within these limitations therefore each Vorstand-member was independent in his working-field, and the practice developed that no other Vorstand-member ever interfered with his conduct of business. This practice was not only founded on the historic facts prior to the merger of I.G. which I adduced a few moments ago, but was justified also by highly practical reasons and necessities which left no other choice, namely:

- (1) the gigantic and over-growing scale of business conducted by I.G., which is not contested even by the Prosecution and of which the evidence gives a vivid picture; as an example I may refer to the chart introduced by the Defense of v. Knieriem in their Document Book V on page 313, showing the annual turnover of I.G., which increased from 1,029 millions RM in 1926 to 2,906 millions RM in 1942;

- (2) hand in hand herewith the ever-growing staff of I.G. Again I may refer to said chart showing an increase of the staff from 93,742 members in 1926 to 187,000 in 1942;
- (3) as contrasted herewith the ever-decreasing number of the Vorstand-members which, according to the just mentioned chart, dropped from 79 in 1926 to 35 members in 1932, and from then onwards gradually decreased to 23 members in 1942.

It follows therefrom that, as also shown by the afore mentioned chart,

to each member of the Farben-Vorstand

in 1926 fell a turnover of 13 mill. RM and a staff of 1187 members,  
in 1932 .... a turnover of 25 mill. RM and a staff of 1900 members,  
in 1936 .... a turnover of 39 mill. RM and a staff of 3,332 members,  
in 1942 .... a turnover of 126 mill. RM and a staff of 8161 members.

This would mean that the respective figures of annual turnover and staff of I.G. Farben per member of Vorstand, as compared with 1926 had doubled by 1932, trebled by 1936, and increased tenfold by 1942.



These figures permit but one indisputable conclusion:

The number of Vorstands-members not keeping pace with the evergrowing turnover and staff of I.G. Farben, but, on the contrary, gradually decreasing, it was actually and definitely impossible for any Vorstand member and certainly far beyond his working-capacity, to attend to all matters of the conduct of business within this - as the Prosecution styles it - giant concern. Therefore a distribution of working-fields and a dividing of responsibilities among different Vorstand-members simply had to take place. It was a cogent necessity. There was no other way. This necessity is furthermore underlined by the fact that, in view of the great variety of products manufactured and sold by I.G., necessarily a high degree of specializing developed among the Vorstand-members, since it was not possible to conduct the business of a specific field of production or sale without a highly specialized knowledge. It results therefore that the different Vorstand-members not only for physical reasons arising from their working-capacity, but also for lack of special knowledge, were not in the position to judge properly the activities within a certain working-field of another Vorstand-member and therefore had to confine themselves to their own working field.

This dividing of working-fields and responsibilities resulted as a matter of actual practice in a considerable autonomy of the different plant and sales combines of I.G. Farben. Within these combines a further specialization and dividing of responsibilities took place according to the different products of these combines which resulted in the setting-up of special - mostly technical - committees and sub-committees, in which all matters before reaching larger committees as the TEA and in the last order the Vorstand, were thoroughly dealt with. Even the plants themselves within the different plant or work combines had a certain autonomy, especially in questions of employment and treatment of laborers, for which the local leaders of each plant were responsible under the German law Concerning National Labor

hereinafter discussed.

All the facts which I just took the liberty to outline, are confirmed by a considerable amount of evidence introduced by the Defense. I may point out in this respect in particular to the affidavits of the former Vorstand-members Dr. Jacobi (Defense Exhibit 171, Document Book v. Knieriem No. V, page 307) and Dr. Pistor (Oster Exhibit 19, Document Book I, page 42), who are not accused in this trial, and to the affidavit of the defendant v. Knieriem (Defense Exhibit 170, Document Book v. Knieriem No. V, page 292), as well as to the testimony of various other defendants and witnesses on this subject.

It follows from the foregoing observations, that within the framework of I. G. Farben there existed an individual responsibility of the different Vorstand-members of the business of their special working-field and that therefore the principle of decentralization had materialized in a substantial degree. This however was not only a matter of actual practice, but also in full keeping with the requirements not only of the By-Laws of I.G., but also of the relevant German law.

The By-Laws of I.G. Farben of 1928, which significantly have not been offered in evidence by the Prosecution, provided in Art. 1, para 2, quote:

"Where certain tasks have been assigned to Vorstand - members, they shall be... attended to by them independently and under their full and exclusive responsibility."

End quote.

These By-Laws, which have been offered in evidence as Defense Exhibit 169 (Document Book v. Knieriem No. IV, page 261) then go on to state that, as an exception from this principle of individual responsibility, the Vorstand-members may not render independent decisions in general and important matters.

The By-Laws of 1938, offered in evidence by the Prosecution as Exhibit 337, Document Book 12, page 177, although not containing

an explicit provision to this effect, nevertheless implicitly accept the principle of the individual responsibility of the Vorstand-members which, in the meantime, owing to the size of the enterprise had become a matter of course. This follows from para 2 and 3 of the By-Laws providing quote:

"It is further the duty of every Vorstand-member to call attention to matters, the knowledge of which is of importance to the other Vorstand-members, especially as it may facilitate for the latter the overall appraisal of the entire business.....

The various Vorstand-members shall as a rule submit particularly important matters, which go beyond the framework of ordinary business conducted, to the full Vorstand.

End quote.

These provisions as a matter of course, presuppose an individual responsibility of Vorstand-members for matters which were not reported as particularly important to the full Vorstand.

The principle of decentralized responsibility however is not only in full keeping with the By-Laws of I.G. Farben, but also with the provisions of the relevant German law.

Reference in this respect is made to the legal opinion of a well-known expert in this special field of law, Dr. Walter Schmidt, submitted as Defense Exhibit 280, Knieriem Document 39. I.G. Farben being organized under the German law, there can be no question that the legal aspect of the responsibility of a Vorstand-member must be derived from the German law as well, namely from the Stock Corporation Law of 30th January 1937 and as far as labor questions are concerned - from the Law Concerning National Labor of 20th January 1934. The Prosecution has recognized this fact by offering in evidence extracts from both laws. I may refer to Prosecution Exhibit 389, Document Book 15, page 50, and Exhibit 393, Document Book 15, page 127.

The Stock Corporation Law provides in Art. 71, para (2) expressly, quote:



"In case the Vorstand consists of several members only all Vorstand-members jointly are entitled to make declarations and to act for the corporations, unless the articles of incorporation stipulate otherwise. The Vorstand can authorize individual Vorstand-members to transact certain business or certain kinds of business....."

End quote.

Hereby the principle of decentralization and individual responsibility is acknowledged by the relevant law.

The same holds true with regard to labor questions under the Law Concerning National Labor which provides in Art. 2 quote:

"The leader of the plant makes the decisions for the employees and laborers in all matters concerning the enterprise, as far as they are regulated by this law. He is responsible for the well-being of the employees and laborers."

End quote.

and in Art. 3 quote:

"In the case of legal persons and personal groups the legal representatives will be the leaders of the enterprise.

The enterpriser or in the case of legal persons or personal groups the legal representatives can appoint a person who participates in the management of the enterprise in a responsible capacity as their deputy. This must be done, if they do not direct the plant themselves."

End quote.

Therefore, the German law of that time prescribed the appointment of a special local deputy plant leader, who was responsible for all labor questions in case the legal representatives of a company did not direct the plant themselves.

This again is a legal confirmation of a policy which I.G. Farben had followed already before said law came into operation, namely the appointment of local plant leaders who were responsible for labor questions affecting their plant, especially for the employment and treatment of laborers. Thus it is clear that the Vorstand of I.G. Farben

as such under the relevant German law had no responsibility for labor questions concerning a particular plant, a fact, which may be of importance under Count III of the Indictment, if, contrary to the opinion of the Defense, the commission of a crime in any of the Farben plants should be assumed.

We have thus ascertained that the principle of the individual responsibility of Farben Vorstand-members, adopted as a matter of actual practice for the scope of their working field with the exception of particularly important matters, if and insofar they were reported to the full Vorstand, was in keeping both with the Farben By-Laws and the relevant German laws. It is therefore indisputably clear, that within these limitations a Vorstand-member alone bore the responsibility under the By-Laws of I.G. as well as under the German civil law. His individual responsibility therefore precluded any joint responsibility of the other Vorstand-members violated their duty of supervision, of which I shall treat later on.

It goes without saying that the same holds true with regard to the criminal responsibility of a Vorstand - member for any such activity within the scope of his working-field. For if the Civil Law recognizes the individual responsibility of a Vorstand-member in preclusion of a joint responsibility of the others, then, as a matter of course, the situation cannot be different under the Criminal Law on the basis of the above stated generally recognized principle, that criminal guilt is personal.

Bearing in mind what has been said about the principle of individual responsibility of each Vorstand-member of Farben for his special working field, the Prosecution therefore, in order to discharge their burden of proof, have to establish on the part of each individual defendant - and not, as they have done hitherto, in a more or less global manner - that he personally participated in a specific crime mentioned in the Indictment, and that he had knowledge of all details

enabling him to judge the criminal character of the activity involved, as required by the law of all civilized nations, in order to establish a guilty mind on the part of a defendant.

In flat contradiction to these principles derived from the aforementioned facts, the Prosecution in Part VI of their Preliminary Trial Brief argue on the basis of global and vague assumptions. They contend that through the instrumentality of the various committees and sub-commissions of I.G., the entire Vorstand was well informed about all important matters. That is nothing but an assumption and no proof of participation or guilt. The Defense has offered evidence on the fact that the reports in the Vorstand, TEA and Commercial Committee were concise and did not go into details, because all matters were thoroughly discussed and dealt with in the various sub-committees, and because the other Vorstand-members relied on the special knowledge and expert opinion of the reporting Vorstand-member. Reference is once more made to the afore-mentioned affidavits of the former Vorstand-members Dr. Jacobi and Dr. Pister, and of the defendant Dr. v. Knieriem. The Prosecution entirely disregard the purpose of such reports which, according to the Bye-Laws 1938, Art. 2, amounted to the following, quote:

"Apart from this it is the duty of each Vorstand-member to submit to the body such matters, the knowledge of which may be assumed to be a matter of importance to the other Vorstand-members, especially such matters as would render it easier for them to survey business transactions as a whole."

End quote.

Therefore these reports were intended to show only such main points which were essential to convey a survey of the business situation as a whole. The Vorstand and such large Committees as the TEA and the K.A. were only interested to learn whether a transaction of major importance affected in any way the interests either of other Sparten or sales combines or of I.G. as a whole. Therefore details which had no bearing on such interests as a matter of course were not included in these



reports, this all the more as the meetings of the Vorstand and TEA and Commercial Committee took place only about every two months and were of a short duration with a long list of agenda to be dealt with; for mere reasons of time therefore there was no possibility to go into details.

This is one more typical instance showing that the Prosecution is arguing their case, entirely disregard the actual facts and especially the situation at a meeting of the Vorstand of such a giant enterprise. Has the Prosecution really introduced any evidence bearing out the contention that, to take an example, in submitting the credits for Auschwitz to the TEA or Vorstand, the reporting Vorstand-member mentioned the employment or treatment of concentration camp inmates, so that the other Vorstand members therefrom were able to gather the impression that these camp inmates were either employed exclusively upon the initiative of I.G. for purposes outside the scope of government production orders, or ill-treated by I.G. personnel, if we assume for argument's sake that these allegations of the Prosecution are true? Or to take another example, has the Prosecution offered any evidence on the fact, that a Vorstand-member reporting to his colleagues on a specific transaction with foreign partners, which the Prosecution styles as an act of spoliation, brought to the knowledge of his colleagues such details of said transaction as to warrant the conclusion, that this transaction was in violation of any rules of the Hague Convention? It is the position of the Defense, that no such evidence has been offered by the Prosecution.

The Prosecution entirely disregards the fact that all the numerous minor committees and sub-commissions of I.G. were set up for the very reason to handle all the details of a certain production scheme or business transaction, for which the Vorstand-member being in charge of the particular working-field was responsible on account of the aforementioned principle of decentralization, and that this Vorstand-member

3 June - M-LU-3-8-Schwab (Int. von Schon)  
Court VI - Case VI

therefore did not and was not bound by the By-Laws to report said details to the full Vorstand or any major committee as the TEA or the Commercial Committee, which served only the exchange of information on points of a general interest affecting other Sparten or sales combines or the enterprise of I.G. as a whole.

Therefore contrary to the opinion of the Prosecution as expressed in Part VI of their Preliminary Trial Brief, all these committees and sub-commissions of I.G. were not intended to supply the Vorstand with full informations on any details of a production scheme or business transaction, but on the contrary to discharge the joint Vorstand of the responsibility to look after all those details.

In fact the Prosecution on page 9 of their Preliminary Trial Brief, Part VI, more or less admits this fact by stating, quote:

"In the second place it - namely the fact that a defendant was a member of the Vorstand - meant that he knew of any matter of any importance in the affairs of Farben, even though he may not have known (although he could have found out with the slightest investigation) of many details in connection with the administration of such matters."

End quote.

If therefore, according to the own statement of the Prosecution, a defendant did not know of many details in connection with the administration of matters coming under the jurisdiction of another defendant, then he cannot be found guilty on a charge of such gravity as raised in this Indictment, because the Prosecution failed to prove beyond reasonable doubt, that he was familiar with all particulars enabling him to judge the criminal character of the activity involved.

Now the Prosecution in the above quoted passage by using the words,

"....although he could have found out with the slightest investigation...."

touch, on a problem which has been a subject of thorough discussions in legal literature and court judgments of all civilized countries, the problem of a crime committed by omission.

The Criminal Law of all civilized nations provides for that a crime can either be committed by way of a positive activity or conduct - or by way of omission, that is in contravention of a duty to act and hereby to prevent the criminal effect.

As to the crime committed by way of positive activity, there is nothing much to be said from a legal point of view. It only should be stressed once more with reference to the degrees of participation mentioned in Art. II, para. 3, of Control Council Law No. 10 - its applicability being left aside for the moment - that knowledge alone of the criminal activities of another defendant is not sufficient to convict a defendant on charges of this nature, but that apart from knowledge there must be established some sort of a positive conduct on his part. I may once more quote the following significant passage from the



judgment of the Military Tribunal Nr. II in Case Nr. 4 versus Pohl and others (Transcript page 811), giving a clear interpretation of the aforementioned provisions of Control Council Law No. 10, quote:

"The only consent claimed arises from imputed knowledge - nothing more. But the phrase "being connected with" a crime means something more than being in the same building or even being in the same organization with the principals or accessories. The International Military Tribunal recognized this fact when they placed definite limitations on criminality arising from membership in certain organizations. There is an element of positive conduct implicit in the word "consent". Certainly, as used in the ordinance it means something more than "not dissenting."

End quote.

As to the commission of a crime by way of omission, it is acknowledged in the Criminal Law of all countries, that, in order to convict a person under this aspect, there must be established on his part beyond reasonable doubt a duty to act, which has been violated by him. Said duty may be derived either from the law or from a contract resp. agreement or from an activity of the defendant prior to the commission of the crime.

I may refer in this respect to the legal opinion of the well-known German Professor of Criminal Law at the University of Munich, Dr. Edmund Mezger, which has been introduced as Defense Exhibit 281/282, Knierian Document 40/41, and which deals with the legal prerequisites of the criminal responsibility of managing directors of a Stock Corporation.

I do not propose to touch here on the question discussed in said opinion, whether the activities of these defendants should be adjudged under the German Penal Law or under rules derived from the Continental Law of Europe or from a still broader System of International Law. Though the Defense maintain that the German law should be applicable for the reasons stated in the afore-mentioned opinion, this is of no decisive importance as to the question to be discussed here, namely the prerequisites of a crime committed by way of omission. For the fact that such crime presupposes a duty to act, which has been violated, is acknowledged by the Criminal Law of all civilized countries.

Furthermore it should be equally clear that the question, whether and to which extent a duty to act existed on the part of these defendants, can be answered exclusively by referring to the theories developed by the German Commercial Law and court-practice under the system of which I.G. Farben was organized and according to which therefore alone the duty of the defendants to act and intervene can be determined.

Such duty to act in the case of these defendants amounts to the duty to supervise the activities of another Vorstand-member, if the latter, as it has been the practice with I.G. Farben, had been assigned a special working-field for which he was responsible.

I may again refer to the legal opinion of Dr. Walter Schmidt, Defense Exhibit 280, Knieriem Document 39, and to the affidavit of the defendant v. Knieriem, Defense Exhibit 170, Knieriem Document 34, in which the range of said duty to supervise the activities of a Vorstand-member by his colleagues is thoroughly discussed. I may summarize these observations as follows:

If a Vorstand-member, as already shown, was not directly responsible for the activities of his colleagues within the latter's special working-field, he nevertheless had the obligation not to leave the business scope of the other Vorstand-members altogether out of sight.

This however did not imply his duty to interfere with the conduct of business within the working-field of his colleagues.

Therefore the Vorstand-members were not liable to supervise the activities of any one of their colleagues by keeping a constant check on these activities.

Such interference and constant check - as a matter of actual practice in I.G. Farben - neither occurred nor even was permitted. The reasons are obvious.

On the one hand such a check in view of the giant size of Farben's business and the comparatively small number of Vorstand-members would have been definitely beyond the physical working-capacity of any one of the Vorstand-members.

On the other hand, as already mentioned, the great variety of products manufactured and sold by Farben required a highly specialized knowledge, so that a Vorstand-member, not being a specialist outside his own working field, also for this reason was not in the position to check effectively on the activities of another Vorstand-member.

Last not least, it was the practice in Farben, in selecting leading personalities, particularly Vorstand-members, to demand the highest standards in regard to character and professional qualifications with the result that, until such time he has actual proof to the contrary, each Vorstand-member was assured that his colleagues were absolutely equal to their tasks and that they would perform them correctly, in full keeping with the requirements of any law whatsoever and to the best of their abilities.

The duty of supervision not amounting to a constant check on the activities of each Vorstand-member for the just stated reasons therefore was confined to a general line. The essential factor was that the attention of the Vorstand-members to the other members' activities was directed to satisfying oneself, whether or not a particular colleague was generally managing his affairs according to recognized practices and whether, on the whole, he was equal to his tasks or fundamentally failing in this respect - according to the well-established principle: "men not measures".

On the basis of these observations, which are in full keeping both with the German Commercial Law as well as the practice adopted in this respect in I. G. Farben, the duty of supervision of a Vorstand-member did not imply the obligation to find out on his own initiative without any reasonable ground of suspicion, what another Vorstand-member was doing in his particular domain or whether or not he had failed to submit some points to the full Vorstand under the rules of the By-Laws.

Only in cases where some reasonably reliable information reached the ears of some Vorstand-member or where he had reasonable grounds for suspicion, that a colleague was not attending to the affairs of his special domain as he should, said Vorstand-member had the duty to investigate the



matter and to take the appropriate steps.

It follows therefrom that a duty to act and intervene as a matter of actual practice as well as of law arose only in case a report by a Vorstand-member to one of the Committees or to the full Vorstand, gave some reasonable ground of suspicion on the part of the other Vorstand-members, as to whether the reporting colleague in general or in a particular case was living up to his tasks.

After having outlined now the range and scope of the duty of supervision of the Vorstand-members with regard to the activities of their colleagues under the aspect of the actual practice and the Civil Law, I may turn now to the conclusions to be drawn therefrom with regard to the criminal responsibility of Vorstand-members violating this duty of supervision.

Translated into the language of Criminal Law, this duty would imply the obligation to act and intervene, if a report by a Vorstand-member to any of the Committees or to the full Vorstand caused some reasonable ground of suspicion on the part of the other Vorstand-member, that his colleague was involved in some criminal and unlawful activity.

It follows therefrom that none of the defendants under the rules of Criminal Law was liable to investigate any activities of his colleagues as to their lawfulness without a reasonable ground for suspicion, deriving from a report of said colleague.

Therefore in order to convict any of the defendants under the aspect of a crime committed by way of omission, that is by way of violating his duty of supervision, it must be established in the first place beyond reasonable doubt, that this defendant, on account of the knowledge he had of a criminal activity of another defendant, had a reasonable ground of suspicion obliging him to investigate same and to intervene.

This however is not yet sufficient. As under the Criminal Law of all civilized countries the chain of causality must be proved, the Prosecution furthermore is bound to establish that, in case the defendant had performed his duty of supervision and had intervened, the criminal effect, caused by the activity of his colleague, would have been avoided. This implies three important conclusions:

One: If the criminal effect had been already brought about before the defendant was given a reasonable ground of suspicion, he cannot be convicted;

Two: The same holds true if his intervention would not have resulted in preventing the criminal effect, because it otherwise would have been just as well enforced by the local authorities;

Three: The same holds true if the intervention of the defendant in view of his actual position in the Vorstand would have been without any result.

After having established a violation of a duty to act and intervene that is an omission and an interdependency of this omission and the criminal effect, the Prosecution last not least has to prove the guilty mind on the part of the defendant with regard to said omission. And here we have a fundamental difference between the Civil and the Criminal Law, at least as far as charges of this nature are concerned.

Whereas under the Civil Law a simple negligence in violating the duty of supervision would be a sufficient ground for an action for damages against such a defendant, on the charges pending before this Tribunal a defendant can be convicted only if he had deliberately and willfully violated said duty. Therefore a defendant cannot be convicted, if he either on account of negligence overlooked a ground which should have aroused his suspicion, or if he acted carelessly by not investigating the matter, because on account of negligence he assumed that the criminal effect after all would not come about.

A. deliberate and wilful violation of the duty to act and intervene implies therefore, that the defendant knew that the criminal

effect would come about in case he - the defendant- did not intervene or at least, that the defendant considered the possibility of such effect - and that he approved thereof. Therefore in this connection a "closing the eyes" or "turning away" - to use two phrases popular with the Prosecution - is relevant only, if the defendant had realized at least the possibility of the criminal effect and of preventing it by his intervening, and if furthermore from his behavior the indisputable conclusion may be drawn, that he had approved of said effect. Otherwise no deliberate and wilful omission can be established.

A.. these prerequisites of a guilty mind on the part of an individual defendant must therefore be proved beyond reasonable doubt by the Prosecution, if any of the defendants should be convicted on the ground of not having intervened in a case of a criminal activity of any other defendant, granting of course, that such activity has been proved as well.

It is the position of the Defense, that the Prosecution has not established any of the afore-mentioned prerequisites of a crime committed by way of omission with regard to any of the defendants.

A. survey of this nature would not be complete without mentioning one important factor, which is restricting the responsibility of the defendants as Vorstand-members both in the case of an alleged crime committed by positive activity or by omission. I am alluding to the plea of necessity, which must be just as well considered one of the fundamental principles of the Criminal Law of all civilized nations precluding the guilty mind of a defendant.

The nature of the plea of necessity and the underlying principle to this defense in my humble opinion cannot be styled better and more precisely than in the following passages from Wharton's "Criminal Law", Volume I, Chapter VII, subdivision 126, and Chapter XIII, subdivision 384, quote:



"Necessity is a defense when it is shown that the act charged was done to avoid an evil both serious and irreparable; that there was no other adequate means of escape; and that the remedy was not disproportioned to the evil."

"Necessity forcing man to do an act justifies him, because no man can be guilty of a crime without the will and intent in his mind. When a man is absolutely, by natural necessity, forced, his will does not go along with the act."

End quote.

Now it has been argued by the Prosecution that, according to the provision of Art. II, para 4, subdivision (b), of Control Council Law No. 10, the fact that any person acted pursuant to the order of his government or of a superior does not free him from responsibility for a crime.

It is the position of the Defense however, that the afore-mentioned provision, being opposed only to the plea of superior orders, cannot supersede the plea of necessity, being a fundamental principle of the Criminal Law of all civilized nations. Again I may refer to Warton's "Criminal Law", which contains in Volume I, Chapter VII, subdivision 126, the following significant statement, quote:

"The law of cases of necessity is not likely to be well furnished with precise rules; necessity creates the law, it supersedes rules, and whatever is reasonable and just in such cases is likewise legal."

End quote.

It follows therefrom, that necessity as a plea of defense supersedes also the afore-mentioned provision of Control Council Law No. 10, and it is very significant in this respect that the Tribunal No. IV in Case No. 5 versus Flick and others assumed the same viewpoint. I may quote from the grounds of the judgment the following passage (Transcript page 10992), quote:

"In our opinion, it is not intended that these provisions are to be employed to deprive a defendant of the defense of necessity under such circumstances as obtained in this case..... This Tribunal might be reproached for wreaking vengeance rather than administering justice if it were to declare as unavailable to defendants the defense of necessity here urged in their behalf. This principle has had wide acceptance in America and English Courts and is recognized elsewhere."

End quote.

On the basis of the afore-mentioned observations the plea of necessity requires that a defendant acted under a "clear and present danger". It is the position of the Defense, that the peculiar circumstances, under which all of the defendants lived in the former Reich after the Nazis came to power, constitute by themselves such a "clear and present danger", and that therefore the defendants on the ground of said peculiar circumstances may advance the plea of necessity in all cases where the defendants by omitting a specific activity or by interfering with the activity of some other person or group of persons would have been in clear opposition to measures or a program adopted by the Nazis authorities.

This particularly holds true with regard to the so-called Nazi slave labor program with all its consequences, but can just as well be set forth with regard to other activities covered by other Counts of the Indictment. Again I may refer in this respect to the judgment in the Flick case, because in my opinion the peculiar circumstances, under which the German industrialists including these defendants lived at that time in Germany, cannot be styled more emphatically than in the following passage on page 10993 and 10994 of the Transcript, quote:

"We have already discussed the Reich reign of terror. The defendants lived within the Reich. The Reich, through its hordes of enforcement officials and secret police, was always "present", ready

to go into instant action and to mete out savage and immediate punishment against anyone doing anything that could be construed as obstructing or hindering the carrying out of governmental regulations or decrees."

End quote.

After having covered now to the best of my ability the field of the general theory of responsibility, I may now for Your Honors' convenience briefly summarize my observations as follows:

One: Under the rules of Criminal Law there is no collective responsibility.

Criminal guilt can only be personal.

Two: In the case of major German Stock Corporations having on their board of directors several Vorstand-members a dividing of working-fields and responsibilities among the various Vorstand-members was customary and admissible both as a matter of actual practice and of law.

Three: In I.G. Farben such dividing of working-fields and responsibilities was carried through to a considerable degree owing to the peculiar circumstances which I took the liberty to outline to Your Honors.

Four: There existed no duty on the part of the defendants as a member of law and of actual practice, to check constantly without any reasonable ground on the activities of a colleague. In view of the fact, that it was the practice in I. G. Farben, in selecting leading personalities, to demand the highest standards in regard to character and professional qualifications, each defendant could rely on the correct conduct of business by his colleagues. On the other hand each defendant was preoccupied to the limit of his working-capacity by the special tasks assigned to him and therefore in the first place had to see to it, that his own work was done in a proper



and orderly way.

FIVE: Also as far as reports and decisions in the full Vorstand or in the TZA or Commercial Committees were concerned, only those points were relevant for those defendants, who were not familiar with the subject, which appeared in the report or were discussed. Moreover it had to be assumed that the experienced knowledge of the reporting Vorstand-member and his familiarity with the issue concerned was superior to that of his colleagues.

Six: The Prosecution has not established, that any of the defendants in any particular case had a reasonable ground, deriving either from any peculiar circumstances of the case or from the personality of another Vorstand-member, to consider objectionable any specific activities of said colleague coming now under one of the Counts of this Indictment and to investigate these activities accordingly. Therefore in no case a violation of the duty to supervise and intervene, and consequently no "closing the eyes" or "turning away" has been established by the Prosecution.

Seven: The crimes covered by this Indictment can be committed only deliberately and wilfully and not out of negligence. Therefore a "closing the eyes" or "turning away" could be punishable only if the defendant had realized at least the possibility of a criminal effect and of preventing it by his intervening and if furthermore he had approved of said effect.

Eight: The defendants may advance the pleas of necessity in all cases where by omitting a specific activity or by interfering with such activity, they would have been in clear opposition to measures of the Nazi authorities.

Nine: It is therefore the position of the Defense that even if -contrary to their opinion- certain activities of one or several defendants directly involved therein should be considered criminal, in none of such cases a criminal re-

sponsibility of the other defendants can be assumed on the basis of all the afore-mentioned observations.

This, Your Honors, brings me to the end of my Closing Statement covering the general subjects of the relevancy of the Prosecution's evidence under Count I and V and the general theory of responsibility.

I am afraid that I took up Your Honors' time by indulging in rather extensive legal arguments. But I thought it proper and fitting to do so to the best of my abilities, as in my humble opinion the incredibly vast amount of evidence, which kept pouring in during these past months, at times nearly engulfed certain simple and basic legal rules, long ago conceived by men free from feelings of engorgement and dedicated to that noble cause, which so frequently has been abused, for which so many gave the last full measure of devotion, and which alone may revive in us the hope that, after all, human dignity will not perish from the earth and this harassed world of ours will have new birth of freedom - the cause of justice.

THE PRESIDENT: The Tribunal is now ready to hear Dr. Simms who will address the Tribunal on behalf of the defendant von Schnitzler.

DR. SIMMS: (Defense counsel for Dr. Georg von Schnitzler:

FINAL PLEA SCHNITZLER

Your Honors,

1. For the last 2½ years I have lived in Nuernberg in close connection with the War Crimes Trials, that is to say, under conditions which have been imposed on these trials by the Prosecution. It often appears to me as if I, with the Prosecution, were living on a desert island, far from present events and actual problems. If we stop to think why, we soon find a reason for it. The reason is that the Prosecution glorifies a certain date, the 8th of May 1945, and sees to it with tenacious resolution that no evidence and no legal questions are dealt with which refer to the time after this date, as if history had stopped short on that day, the date of Germany's unconditional capitulation. I know that the Prosecution pursues a purely tactical purpose in protesting immediately when a fact is mentioned which applies to the past 3 years; it seems to have the feeling that the accuracy of its thesis of international law is jeopardized if the development of the past 3 years in Germany and in the world is regarded in the light of this thesis, it even seems to think it dangerous to judge all actions of the allied military governments, after 8 May 1945, on the basis of the international law theory of this trial. I am equally certain that this basis of international law can only be recognized if not merely the actions of the vanquished but also those of the victor are dealt with, and if not only the development prior to the war but also the subsequent development is examined. International Law carries its obligations for the victor as well as for the vanquished, as duly stressed by Justice JACKSON in the trial before the International Military Tribunal. ROOSEVELT's aim in the Nuernberg-Trials, that of establishing conclusive foundations of international law and with it an universal law, can be attained only if - not as is the case with the Prosecution - legal judgment does not stop short at the moment when an absolute victor and an unconditional vanquished are established.
2. On 14 May 1948 the state "Israel" was founded - a fact which will have



been hailed by the Prosecution as well as by me - with David Ben Gurion as President of the new State. Already on 15 May the United States of America recognized this new state and already on this same day the neighboring Arab States began to make war on this new State. Israel, at once, approached the Security Council of UNO and, shortly afterwards the United States of America requested the Security Council to bring about the suspension of military activities because they constitute a breach of the peace. The Arab League has embarked on a war of aggression and the world, if it has any honesty at all, is now faced with the problem which has been confronting us in this tribunal for the last 9 months: Who has planned this aggressive war, how far can and must Politicians, soldiers and private industrialists at home and abroad be made responsible for it? I believe there must be many people in the world who would not welcome it if their latest actions were viewed in the light of the Prosecution's theories of international law, and this consideration alone reveals the entire problem of the indictment made at Nuernberg against German Industry for planning, preparing and supporting Hitler's war of aggression.

3. I believe that for legal reasons a decision in this trial as to Count 1 of the indictment, that is to say, the accusation of planning and preparing the war of aggression is far simpler than the Prosecution thinks and than would be assumed, judging by the enormously extensive material submitted by the Prosecution. It has repeatedly been stated that the entire German Industry and above all Farben knew of, approved and supported plans for aggressive warfare. It is interesting to note that the Prosecution already took this view in the IMT trial and also in the first industrialists' trial against the Flick-Konzern but, in the latter, finally desisted from making this account of the indictment because it did not feel very sure of its own arguments in this respect. Meanwhile we must add that in the Krupp-trial being conducted at the present time Alfred Krupp von Bohlen und Halbach and his collaborators have been acquitted on Count 1 of the indictment by the American Military Tribunal. In spite of this the

Prosecution tenaciously maintains its theory. This reminds me of the words of Edmund BURKE:

"Imagination is exhausted, reason is worn out, experience has pronounced judgment, but obstinacy has not yet been conquered."

4. In Article 10 of ordinance No. 7 of 16 October 1946, it was established that the decisions of the judgment by the International Military Tribunal shall be conclusive for all American Military Courts. The IMT sentence, however, rejected Germany's collective guilt proclaimed by the Prosecution and demanded positive knowledge of Hitler's aggressive plans whenever an individual defendant was to be condemned for aggressive warfare. Allusion was made to "recognized legal principles" in these words:

"It is one of the foremost of these principles that criminal guilt is personal";

as a pre-requisite for conviction for participation in aggressive warfare it demanded that the individual defendant "had knowledge of Hitler's aims and gave him his collaboration." In accordance with this the American Military Tribunal, in the preamble to its judgment of 22 December 1947 on the Flick-Konzern, referred to the "Law of civilized nations" and the "principles known to all experts on Anglo-American criminal law" and said:

"No-one may be convicted unless his personal guilt has been proved."

My statement will prove that there was no personal guilt, as demanded by the IMT, or positive knowledge of Hitler's aggressive plans either in the case of my client Dr. von SCHNITZLER, or in that of any other member of Farben, and that therefore the pre-requisite demanded by the IMT for a conviction for aggressive warfare does not exist.

5. As to law and evidence I should like to make the following statement in this respect:

1. If defendants have been sentenced for planning and directing aggressive warfare by the IMT-judgment, this applied exclusively to the highest political and military leaders of Germany previous to and during the war. The conviction therefore referred to persons who acted on behalf

of the State and who were representatives of the State by virtue of their official position. The problem, however, has not been decided by the International Military Tribunal as to whether an industrialist, that is to say, a private individual, can be made responsible for actions involving international law. The doctrine of international law the whole world over was so far based on the assumption that only states were bound by the regulations of international law, regardless of whether it was a question of statute - or customary law. International law contains obligations incumbent on the state and rights which are the prerogatives of the state. The individual private person, by international law, is neither granted prerogatives nor bound by obligations, unless certain ordinances have been transplanted into the criminal legislation of individual countries and, in this manner, have become national law. This interpretation, which was entirely prevalent until the second world war, can be deduced from literature, from the meaning of statute agreements and also from their wording. I need mention only a few examples:

In the Hague Rules for Land Warfare of 1907, mention is made only of the "contracting powers" ("Les Puissances contractantes").

In Article 43 of the supplement to the Hague Rules for land warfare, as in many other articles, allusion is made to the "occupants" and in article 44 to the "belligerents". In both cases the meaning of the law proves that the occupying, that is to say belligerent, state is meant. Consequently, in article 55, the jurisdiction over state property in the occupied territory is incumbent on the "occupying state".

In the same way the Kellogg-Briand-pact of 27 August 1928 alludes only to the "High-contracting parties", that is to say states only.

It is of special interest that in article 41 of the supplement to the Hague Rules for Land Warfare it is expressly determined that the state is responsible for the compensation of damages where the conditions of an armistice have been violated by private persons acting on their own initiative.



In this one exception where private persons act on their own initiative, provisions are made for the individual punishment of guilty private persons. But even then only in such a form that one contracting power can demand from the other contracting power the punishment of the guilty person. The final decision in this connection is, however, given in article 3 of the Hague Rules for Land Warfare of 1907, where in particular the case of violation of the Hague Rules for Land Warfare is dealt with. It is decreed that the "belligerent party", that is the State, is bound to pay compensation for damages and in the second sentence it is clearly established that the State is responsible for all actions committed by these persons who belong to its armed power.

It is in full accordance with this reasoning if the highest judicial authority in the sphere of international law, that is to say, the Hague International Tribunal, stated in 1928:

"It must readily be conceded that according to a long established principle of international law the official agreement, being an international agreement, creates in itself no direct prerogatives nor obligations for private individuals."

6. I do not overlook the fact that in recent times the tendency has arisen to make private individuals responsible under international law. This tendency has also found expression in the judgment of the International Military Tribunal, and this High Court has confirmed the responsibility of private individuals. It must however be taken into consideration that the Trial before the International Military Tribunal did not concern private people, as the present trial does, but responsible officials of the state, that is to say persons who by virtue of their office acted for the State.

It may be a perfectly sound point of view, not to adhere under all circumstances to the, in fact quite clear text of international law, but to argue instead on the basis of its meaning, and to contend that it is the representative of the state who is legally responsible, because the state as an anonymous subject cannot be prosecuted as such, but can at best be held liable for payment of damages. But it is on no account

permissible to make a private individual, namely an industrialist, legally answerable, as long as he is not acting on behalf of the state, and is not a government official or functionary, and who, in view of the described legal theories hitherto applied, could not possibly, and actually did not, imagine that he, as well as his government had the duty to ensure that international law is observed.

Based on this argumentation, I am in agreement with the contention of the Prosecution in the great IMT trial, though not with that of the Prosecution in this trial. I quote the French Chief Prosecutor, DE MENTHON, in the indictment of 17 January 1946:

"It is clear that in the organization of a modern state, responsibility is confined to those acting directly on behalf of the state, as they alone are in a position to judge the legality of orders given. They alone can and shall be prosecuted."

Perhaps the High Tribunal remembers the "Legal opinion on criminal responsibility of private individuals in breach of international law", by Professor Dr. Herbert KRAUS, a world renowned professor of international law, which I submitted when presenting my evidence, and which was admitted for argumentation purposes as Schnitzler Exhibit No. 285. I do not wish to take up the time of the High Tribunal unnecessarily, and I will therefore refer to this detailed and comprehensive opinion for further justification of my legal opinion, and ask the High Tribunal to avail itself of same in support of my legal opinion.

7. When making his final statement in the Flick Trial on 24 November 1947, GENERAL TAYLOR tried to refute my above-mentioned contentions with the assertion that my opinion had long been superseded, he made reference to individual precedents. However, the precedents that he cited were all factual cases, in which the charges were such as are punishable under every criminal code. He talked for instance of murder and maltreatment and always of acts committed by an individual private person, whereas here, in the charge of aggressive war, we have state measures within the scope of international law, for which at best the person acting on behalf of the

state may be held responsible.

On the same occasion, General TAYLOR, to my surprise, turned against his own colleague, the French Chief Prosecutor DE MENTHON, whom I have just quoted. In view of de MENTON's importance, one would hardly suppose that General TAYLOR is right in saying that de MENTHON's real views were not those expressed in the trial; and his argument that de MENTHON did not represent the views of the French government seems to me even less justified. I could imagine that the US Prosecution and General TAYLOR, too, have represented opinions here in Nuernberg, which do not conform with those of the US Government.

THE PRESIDENT: May we interrupt you at this time, Dr. Siemers, for our morning recess. The Tribunal will recess for fifteen minutes.

(A short recess was taken.)



THE MARSHAL: The Tribunal is again in session.

DR. SIEMERS: The legal issue of interest here was also dealt with by the US Military Tribunal in the Flick verdict; the Tribunal declares:

"The view that international law deals only with the actions of independent states, and cannot provide for punishment of individual persons, can no longer be upheld."

It made reference to the "Case 'Ex Parte Quirin' recently decided by the Supreme Court of the United States". Thus the American Tribunal arrives at the conclusion that private individuals too can be held responsible, and the difference in guilt between the latter and the government official, in other words the person acting on behalf of the state, exists only "in degree, not in cause". Against this there are the US Military Tribunal's own words, that the view held by me "can no longer be upheld", whereby it admits that such a view was justified up to the time of the decision of the Supreme Court of the United States in 1942, and represented the prevalent opinion. Now, if this is so, a German industrialist cannot be held responsible under international law, just because in the middle of the war the Supreme Court of the United States adopted a new legal outlook, an outlook which consequently did not exist at the time of the acts under discussion, i.e. 1939, and of which the defendants were moreover unaware until now, after the war.

2. However, even if the High Tribunal should hold the view that a private industrialist can be held responsible within the scope of aggressive war crimes, the findings of the International Military Tribunal in its verdict of 1946 eliminate this possibility. As mentioned earlier, it is a *conditio sine qua non* according to the IMT verdict, that the defendant knew Hitler's plans of aggression and supported him in the knowledge of such plans. The IMT verdict here applied severe standards to the Prosecution's duty concerning its submission of evidence. It refers repeatedly to the "4 secret conferences",

and states the following:

"These conferences took place on 5 November 1937, 23 May 1939, 22 August 1939 and 23 November 1939. At these conferences Hitler made important statements about his aims, worded in such a way as to make their meaning quite unmistakable."

I have introduced the documents on these conferences as evidence in this trial, namely as Schnitzler Exhibits 16 - 20. They are the so-called key documents of the first trial, described in meticulous detail by the High Tribunal in its verdict, and used as basis for the conviction or acquittal, as the case may be, of the major war criminals.

These 4 conferences, which form the subject of these documents, run like a red thread through the entire verdict. In each case, the Tribunal, when convicting or acquitting on the aggressive war count, states whether the respective defendant participated in one or more of these meetings, or whether, due to his close and intimate relations with Hitler, he learned of the contents of these Hitler speeches by some other means.

It must be noted first of all that these statements of Hitler's were made exclusively before the military high commanders and a few high-ranking political leaders, such as Neurath. Not one of these meetings was attended by a single German industrialist, let alone a member of IG, or Schnitzler.

In a voluminous almost 50 page-excerpt from the verdict (which I introduced in the trial as Schnitzler Exhibit 21), I have copied out every one of the innumerable passages of the verdict dealing with these 4 secret conferences. This excerpt is definite and conclusive proof that, on the war crimes count, the International Military Tribunal convicted a defendant only if the Prosecution had proved that he had positive knowledge of Hitler's plans of aggression as revealed in these 4 secret conferences. The excerpt shows further that in numerous cases even the so-called major war criminals were acquitted on the aggressive war

charge, simply because they did not participate in these conferences. It is sufficient to refer in this connection to two completely different instances:

SCHACHT, who did not participate in any of these meetings, was acquitted, although the verdict explicitly refers to him as a "central figure in Germany's rearmament program" - with the remark that rearmament as such is not a crime, at any rate not if there is no positive knowledge of the plans of aggression. It is particularly significant that Bormann, an out and out National Socialist, close confidant of Hitler and the Chief of the Party Chancellery, was acquitted by the IMT on the aggressive war count, namely on the following grounds:

"There is no evidence that Bormann knew of Hitler's plans to prepare, launch and wage aggressive wars. He did not attend any of the important conferences, at which Hitler revealed his aggression plans piece by piece."

Now, if a Bormann was acquitted, one cannot possibly convict a Schnitzler, and if a Schacht, in spite of his prominent positions and superior knowledge of Germany's entire economy did not know of Hitler's Plans, nobody can seriously allege that Schnitzler had such knowledge, although he held no position in Hitler's state and had no connections whatever with Hitler or any of his confidants.

Let me offer another argument in this connection:

In evidence, the Prosecution submitted the voluminous document on the "Fall Gruen" (Case Gruen), which contained the plans against Czechoslovakia and likewise played a great role in the IMT trial in regard to the knowledge of Hitler's plans (388 PS Prosecution Exhibit 1041). In the session of 26 January 1948, I submitted the motion to cancel this document, because the Prosecution offered no evidence that Schnitzler or any of the co-defendants knew of these plans of Hitler's. May I recall that after a thorough debate, this document was stricken from the evidence in this trial (Record page 5878 German, 5833 English).



The Prosecution, just as in the case of Hitler's plans for Czechoslovakia, is unable to establish proof of knowledge regarding the above-mentioned 4 key documents. But according to the IMT verdict, a defendant in this trial may be convicted on count 1 only if the Prosecution has established proof of positive knowledge of these key documents in the sense of the IMT verdict - which is precisely what it has failed to do.

3. Instead, the Prosecution tried, to bring indirect proof of his knowledge thereof by submitting numerous documents in circumstantial evidence. I do not believe that in view of the IMT-judgment, circumstantial evidence suffices to prove direct knowledge, especially since in all instances the attempts of the Prosecution, made during the trial against the chief war criminals, failed to establish proof by means of circumstantial evidence, especially in the case Schacht. Despite all this, I feel obliged, to deal with at least some of the circumstantial evidence, in order to refute the Prosecution even in so far.

a) Farben allegedly supported Hitler as early as in 1932 and then continuously from 1933 onwards. I do not need to go into details on this subject, because Dr. Dix has dealt with it in his presentation of evidence and in his final plea. However the Prosecution mentioned one special event, in which Schnitzler was involved: On 20 February 1933, in view of the impending Reichstag elections in March, a meeting was held in Berlin to which Goering invited 20 - 30 industrialists by telegram. The assertion is voiced in the indictment and in the trial brief, that at this meeting Hitler expressed "his treasonable intention" of seizing power by force, if he did not succeed in the elections, and was said to have stated, that "private enterprise in the age of democracy was not tenable". The true facts have been made clear by the evidence and have established the incorrectness of this assertion made by the Prosecution, and this moreover on the basis of the testimony given by the witness Schacht in the IMT-trial and

in the Flick-trial (Schnitzler Exhibit 9 and 10) and by the witness Dr. Flick in the I.G. - trial (Hearing on 12 March 1948). Both witnesses were present at this meeting and agreed in their testimony that this conference merely dealt with the creation of an election fund, in the same way as those held under the auspices of democratic governments before 1933; moreover the election fund was not only used for the National Socialists alone; it was to be put at the disposal of the NSDAP and the German National People's Party (Deutschnationale Volkspartei). During the conference one of the industrialists demanded that the election fund should at the same time also be put at the disposal of the German National People's Party and Flick testified that it was actually Schnitzler, who made this proposal at the meeting - a proposal which was received by Goering with displeasure, but which was adopted by the meeting nevertheless; moreover Flick testified that at the time Hitler spoke about unemployment and the danger of Communism, and definitely supported the preservation of private property. Although industry allegedly adopted a "very skeptical attitude" towards Hitler, this trend of thought had had a very reassuring effect. Hitler did not express any treasonable intention of seizing power by force, which for logical reasons too, was out of the question, because at that time he had already been in power for one month. It is therefore in no way incriminating, if the I.G. contributed RM 400,000 - to this election fund, a sum which Flick quite rightly considered "modest" in view of the fact, that he contributed RM 250,000 - from the capital of his Flick-Konzern, which was smaller, and in view of the further fact that in 1932, on the occasion of the election-battle between Hindenburg and Hitler for the Reich Presidency Flick offered about 1 million RM in favor of Hindenburg, and on the occasion of the elections the I.G. had also made large monetary contributions in favor of Hindenburg. In view of this fact, namely that as late as in 1932 the I.G. and Flick definitely turned against Hitler and National Socialism, they were forced to

contribute to the election fund of 1933 following Hitler's rise to power, and after his fundamental opposition to the Konzerne became generally known. It seems important in this connection to point out, that during a conversation with Flick Reichsstatthalter Mutschmann said: "I am in favor of maintaining private industry with one exception: I.G. Farben must be nationalized."

b) As a further example, the Prosecution introduced Goering's speech on 17 December 1936, made in the Preussenhaus in Berlin, wherein before a large audience of government officials and industrialists, Goering explained the aims of the Four Year Plan. Both Krauch and Schnitzler were present from I.G. The Prosecution considers the final words of Goering's speech especially incriminating: "We are already at war, only no shots are being fired as yet", and the fact that 5 days later, i.e., on 22 December 1936, on the occasion of a meeting of the I.G.'s Dye Stuff Committee, Schnitzler made a confidential report on Goering's speech: "regarding the tasks of German industry in connection with the implementation of the Four Year Plan". This circumstantial evidence is also of no significance. The witness Dr. Kueper (hearing on 28 January 1948) who, according to the minutes, participated in the meeting of the Dye Stuff Committee, stated that the terms "confidential" or "strictly confidential" were of no significance, because these terms, just as later on the words "state-secret" "were greatly abused", although often applied to the most harmless matters. Dr. Kueper did not remember during his interrogation, that Schnitzler made a report on this speech to the Dye Stuff Committee, probably because Schnitzler only reported on the factual and economic part and not on Goering's bombastic closing phrase such as was customary with him and which he liked to quote from a military vocabulary, just like many other National Socialists, even if it was only a matter of an analogous application to industrial affairs.

I should like to recall for instance, all the well-known expressions which were used by National Socialists in connection with



industrial questions: "battle of production", "Labor Front"  
"Soldiers of Labor" and "Guns instead of Butter". Thus Dr. Kuepper  
also remembered Goering's closing phrase from that time: "only no shots  
are being fired as yet"; however he did not remember it from Schnitzler's  
report, but - and this is the essential point - from the publications of  
that time; for this speech was actually printed in the German and foreign  
papers at the time and thus also in the "Times" and in the "Voelkischer  
Beobachter". This expression in particular became the subject of  
many discussions, as is also confirmed by Dr. Kuepper. It is significant  
that unfortunately, foreign countries, even as the Germans and  
Schnitzler, did not consider such bombastic phrases as important as  
they should perhaps have been considered, and especially that they  
did not conclude from them the intention to wage an aggressive war, be-  
cause of the constant promises of peace on the part of Hitler. Perhaps  
it is also of interest to mention in this connection, that Winston  
Churchill at a still later date, even after 1937, strongly urged  
the German State Secretary v. Kuehlmann with whom he was in personal  
contact, "to become a

party member" and added, "if people like KUEHLIANN keep away, how could a moderate attitude be voiced in the NSDAP or gain the upper hand."

(see Affidavit KUEHLIANN, SCHNITZLER Exhibit 14).

13. Furthermore charges have been brought up against the I.G., that through their foreign representatives and the so-called I.G. liaison men they carried on industrial espionage and that they worked in close cooperation with the Auslandsorganisation of the Party, which was headed by Reichsleiter BOHLE. I am only able to say very little on this subject, as its most important points have been dealt with by Dr. NATH in his defense for Dr. ILONER. The Prosecution however, also charged Dr. von SCHNITZLER in particular, in that they referred to the Commercial Committee and the meeting of 10 December 1937, when a resolution was passed regarding "the collaboration with the A.O." according to which nobody was to be posted to the foreign agencies, unless he was a member of the German Labor Front and his attitude towards the new era had been established. In answer to this charge it is sufficient to refer to the hearing of the evidence:

aa) To begin with, the Prosecution in no way made it credible, let alone furnished any proof, that the A.O. of the Party participated in preparations for aggressive warfare, knowing Hitler's plans for aggression. The fact that the party political Auslandsorganisation was equally unpopular with German and foreign firms at home and abroad, because it made National Socialist propaganda, does not constitute proof.

bb) By detailed examination, during the proceedings of 26 January 1948, of the witness Dr. OVERHOFF, a collaborator of Schnitzler's, has shown clearly that the so-called I.G. liaison men did not concern themselves with politics, and even less with the preparation of war, but worked merely to establish economic contact between the representations abroad of the I.G. in the various countries, for instance, in the South-American countries and to bring about cooperation within the I.G. representations in the economic sphere, for instance, in questions of foreign exchange and the different tariff and import measures taken by

the various countries.

cc) This same examination of Dr. OVERHOFF's yielded absolute clarification of the so-called "collaboration with the A.O.". There had been constant friction between the I.G. and the party-political organizations abroad which became more pronounced as time went on, especially as the A.O. attempted to gain influence over the representations abroad of German firms, and the German firms as well as the I.G., resisted. Dr. OVERHOFF described vividly that the heads of the I.G. agencies were mainly men who had been in the business for a long time, in some instances for some decades and who had close business and social contacts with authoritative industrial circles abroad. It was out of the question to expect such persons enjoying a high standing abroad to cooperate with the politically and socially ill-reputed representatives of the party political organizations abroad. It was all the more impossible to comply with this demand of the A.O. in cases where the agents abroad were foreigners or Jews. When, as a consequence, the differences with the A.O. which were promoted by Hitler and the Party became more pronounced, Dr. von SCHMITZLER and his associate the late Kommerzialrat WAIBEL, tried by diplomatic means to find a compromise so as to be left in peace by the A.O. as far as possible. For that reason Kommerzialrat WAIBEL very skillfully conducted some negotiations with the A.O. in 1937, which finally led to an agreement which the prosecution regards as incriminating. In view of the A.O.'s position of power, the agreement as laid down in the records dated 10 September 1937, (Prosecution exh. 363, doc. book 45, number 10) actually was an absolutely favorable compromise, not committing the I.G. to anything. No representative abroad had to be dismissed and none were dismissed. The I.G. merely conceded that new employees sent abroad - this could not mean employees in leading positions but only junior employees - should belong to the Labor Front. One can only understand that this was a success if one knows that the A.O. attempted to get their own people, and moreover, "party veterans" or at least party members, into these representations. This was prevented, and the concession



that the employees had to be member of the Labor Front was a success in so far as it was only an unimportant concession, or, as Dr. OVERHOFF said, "an absolute matter of course and a tautology", as all employees of the large firms already belonged to the Labor Front which meant merely an obligation to pay dues but not any party membership.

The concession regarding the so-called declarations of loyalty contained in this agreement, which were submitted by the prosecution, was equally non-committal. Dr. OVERHOFF confirmed that within his whole, immensely large sphere in the dye-stuff field no such declarations were signed, and at the same time, I have proven this in individual cases by submitting 4 affidavits (SCHNITZLER exhibits 37 to 40).

If the prosecution had known the conditions prevailing in Germany at that time, they would never have regarded those happenings as incriminating; in my opinion they could have realized these things, since through their investigations and their members of former German nationality they are sufficiently well informed on the party's internal-political position of power at that time.

In conclusion of my argument I beg to point out that according to the list drawn up by the witness Dr. OVERHOFF which I submitted as evidence (Schnitzler exh. 3), only 3 of the 22 leading men of the I.G. representation abroad were members of the party. It cannot be shown more clearly that the I.G. actually did manage to steer clear of the A.O.'s influence.

14. d. The prosecution maintains in its trial brief (page 71) that in spring 1940 the I.G. set up an organization named "Company for Sales Promotion" through the defendant von Schnitzler which "was under his supervision and was to serve as a cover firm for espionage agents sent abroad by the Counter-Intelligence." As a matter of fact, this allegation is a complete misrepresentation and the prosecution has not proven any of these allegations. The witness Dr. DOERING rightly said in his examination of 3 May 1948, that "everything imaginable is false" in this allegation. The Company for Sales Promotion was founded long before the war, namely in 1937, and had nothing to do with the High Command of the

Armed Forces or the Counter Intelligence. It was founded neither by the I.G. nor by Schnitzler, but by a Herr KUENZLER who belonged to the canvassing branch. Accordingly the purpose of the company lay in the sphere of advertising. This company, in the interests of industrial and commercial enterprises, obtained records on sales markets at home and abroad for specified types of goods. It carried out investigations and analyses of the markets and worked for private firms who wanted to increase their sales with the aid of the records supplied by the company. Legally speaking it was a society which had a Verwaltungsrat consisting of several prominent industrialists, because KUENZLER, the founder of the firm, had requested the industry to support him in his scheme. This Verwaltungsrat included industrialists who had special experience in the field of canvassing and advertising, for instance, a Dr. MORGENSTERN, the chief of the Information and Press Department of the Deutsche Bank; Dr. Senk, a special adviser on canvassing; Reinhold KRAUSE, owner of the best-known German paper factory Max KRAUSE; Dr. Doering himself as an advertising specialist of the Reich Group Industry; and, besides many other persons, also Dr. von Schnitzler who, as Dr. DOERING stated, had made a name for himself in the field of advertising and in the field of exhibitions and fairs at home and abroad. When Dr. von SCHNITZLER became chairman of the Verwaltungsrat it was due to the same reason for which he was appointed to the Advertising Council and chairman of Exhibition and Fair Committee of the Reich Group Industry. Schnitzler had a particular reputation in this field, which he had already created for himself during the twenties, that is during the time when STIESSLIANN appointed him Reich Commissioner for the Barcelona World Fair in 1929. It was for the same reasons that, following an invitation, he lectured in 1939 on questions concerning exhibitions and fairs to the Italian Industrial Association and that the International Chamber of Commerce at Paris appointed him Chairman of its Exhibition and Fair Committee, and finally also - like other industrialists - he became a member of the Aufsichtsrat of the "Alle" Anzeigen A.G., which, contrary to the biased statement of the Prosecution, was, according to Dr. DOERING, no propaganda

agency, but merely an advertising office. All these agencies were offices on a basis of purely private economy, and the Prosecution takes advantage of all these offices to make charges against my client. It was easy to refute these charges through Dr. Doering, the best informed witness and a specialist in the field of advertising. It can hardly be understood when the Prosecution turns these posts in the field of industrial advertising - considered as free of blame by an impartial person, - into charges; this can be understood only if the Prosecution wants to take advantage of the old proverb frequently exploited by political propaganda "semper aliquid haeret."

15. The only point needing explanation with regard to the company for sales promotion concerned the documents according to which this company became connected with the counter-intelligence office attached to the High Command of the Armed Forces, namely Major BLOCH, not, it is true, from the date of its establishment, but definitely during the war. It is important, first of all, that the company received instructions from Major BLOCH without the Verwaltungsrat or SCHNEPPZLER having anything to do with it, and that, according to Doering's statement, the Verwaltungsrat was informed by Herr KUENZLER only subsequently. It is equally important that these instructions did not concern the field of espionage - as it is supposed by the Prosecution -, but the company's business proper, i.e. purely industrial matters. Nor is this fact astonishing, because Major BLOCH's department had no connection at all with espionage and military counter-intelligence, but dealt exclusively with counter-intelligence in the economic sphere. But it happens all over the world in the same way that during the war, if it is necessary, that a military agency makes use of a firm that can supply information in the purely economic field.

16. The other point, too, which was considered as a charge by the Prosecution, was explained by Dr. Doering, IG and other firms, e.g. ADG and Siemens, did not make any payments to the company in order to support espionage, but exclusively to help the firm during the war by granting



credit, namely during a period in which the firm's financial position naturally deteriorated for lack of sufficient orders for sales abroad and at home. In addition Dr. Doering stated that neither he nor SCHNITZLER nor the other executives liked to see KUENZLER receiving orders from the counter-intelligence office Economy, but that, being members of the Verwaltungsrat, they could not forbid the Vorstand to do so. On the other hand SCHNITZLER, KRAUSE and DOERING were not inclined to continue their functions as members of the Verwaltungsrat, if, owing to the war, the position of the company became dangerous; furthermore Herr Kuenzler himself left Berlin and appointed a deputy who was unknown to the Verwaltungsrat, without previously consulting the Verwaltungsrat. Thereupon all three men decided to retire from the Verwaltungsrat, and SCHNITZLER and KRAUSE asked Dr. Doering to inform the company of this in writing, which he did.

17. The circumstances are similar with regard to the Prosecution's statement, in connection with Major BLOCH, that Josco v. PUTTKALER, an official of the Verkaufsförderungs-Gesellschaft (sales promotion company), went to Shanghai on a special mission for this company, sent reports to Herr v. SCHNITZLER and worked as a spy in China. To refute these statements, I have proved the PUTTKALER was never employed by IG (SCHNITZLER Exhibit 192/193) and was employed by the Sales promotion company only for a few months, without having any connection with the High Command of the Armed Forces. The Prosecution's statement is correct only insofar as PUTTKALER went to Shanghai, not, however, by order of the Sales Promotion Company, because, as stated by Dr. Doering, his employment with the Association had already been terminated. Neither did PUTTKALER - as it is thought by the Prosecution - "apparently" send "reports," but he only wrote a purely private letter on one occasion to Dr. SCHNITZLER. Doering and Schnitzler did not know what PUTTKALER was doing at Shanghai. Subsequently it became clear from the document submitted by the Prosecution (Prosecution Exhibits 937 and 939 in volume 49) that PUTTKALER was supposed

to have co-operated with the Japanese Army after the unconditional surrender i.e. after May 8, 1945. The PUTTKALER case, which has been emphasized so much by the Prosecution is, I think, definitely settled by the fact that the documents incriminating PUTTKALER - not SCHNITZLER-deal with the period after the collapse and, for this reason, at my suggestion, the document Exhibit 939 was stricken from the record by this Tribunal on May 3, 1948 (transcript page 13576).

18. c. The next and last piece of circumstantial evidence which I should like to deal with, and which the Prosecution interprets as planning and preparation of aggressive wars, is the so-called "Neue Ordnung" (New Order), submitted by the Prosecution as Exhibit 1051 in volume 51. In its trial brief (pages 74 and foll.) the Prosecution advances the theory that in the New Order "the IG's desire to conquer and rule was reflected" and that, immediately after France's defeat in the summer of 1940, IG had developed its plans for taking over Europe's chemical and pharmaceutical industry and for the control and domination of European production in the interests of the expansion of Germany's military power and the subjugation of the Continent's economy under German economy. All this sounds grandiose and powerful, and the Prosecution has tried to enhance this impression by inserting long explanations and quotations in its statements. If, however, these documents are considered calmly and my examination of the witness Ministerialdirigent Dr. SCHLOTTERER of the Reich Ministry of Economics, who was originally called, as a Prosecution witness, is evaluated, little is left of the high-sounding phrases of the indictment and the trial brief and the Prosecution's statements in connection with the evidence, very little indeed considering that they were to serve as the Prosecution's proof of the planning and preparation of an aggressive war.

cc) The new Order represents theses of an economic nature dealing with the whole of European chemical industry. Many of IG's personalities contributed towards these theses, which is natural in view of the enormous extent of these works; Dr. KUGLER specified these points in his examination.

The material in the possession of many departments, and particularly of the department for political economy VGLI was used. The work was done at the instigation of the Reich Ministry of Economy, which is shown by the documents. From a legal point of view, it must, above all, not be forgotten that this work was done in the summer of 1940, i.e. during the war. The attached letter which was addressed to the Reich Ministry of Economics, for the attention of Dr. SCHLOTTERER, signed by Dr. v. SCHOTTENBERG and Dr. KRUPP (and submitted by the Prosecution as exhibit 1051) bears, for example, the date of 3 August 1940. This fact alone shows that the work cannot have any connection with the planning and preparation of aggressive wars, the loss so since it was only the result of Germany's victory over France at that time. Furthermore Dr. SCHLOTTERER when examined me on 27 January 1948, most definitely confirmed that this "Government plan new Order" was not connected with the waging of an aggressive war or with armament questions (transcript pages 5901 and 5906.) SCHLOTTERER, added that, apart from other reasons, this government plan could not have anything to do with armament questions, because the Ministry of Economics never dealt with armament questions to High Command for the Armed Forces, which included a special armament office, was responsible for such matters. This armament office of the High Command of the Armed Forces, was, however, by no means concerned in this affair. I am inclined to think that Dr. SCHLOTTERER, who ordered this work to be done, was better informed about this affair than the Prosecution.

bb) The affair becomes particularly clear if we consider the reasons which led to this extensive work being done. Dr. SCHLOTTERER has specified this point in detail in his examination (transcript pages 5894 and foll.)

He points out that this order was "to make preparations for peacetime economy, for the peace treaty in the economic sphere". The problem was a "new order for peace-time economy" and he stated the following:



"The affair started when shortly before the end of the military events in the West - this may have been about June 1940 - State Secretary Dr. LANDFRIED called a meeting of the departmental chiefs in the Reich Ministry of Economics and said that these negotiations and probably in the near future peace negotiations would take place. It was the wish of Minister FUHR that preparations were made for these peace negotiations, and he commissioned the departments of the Reich Ministry for Economy with the task of collecting material. State Secretary Dr. LANDFRIED then gave orders that this 'material should be collected and classified by me.'

Dr. SCHLOTTERER then describes that shortly afterwards the ministry learned that HITLER, GOERING and ROVENTHROP were also concerning themselves with the question of the economic new order of Europe after the war, and that HITLER was thinking, of appointing a Reich Commissioner to deal with this question. The ministry was greatly concerned about this, because - due to its knowledge of previous similar cases - it feared that purely economic questions would then be dealt with by persons who were not competent and only thought in terms of politics. In order to avoid this, the ministry of Economics took over the matter and succeeded in obtaining the task of carrying out preparations for a European peace economy. On the basis of this commission Dr. SCHLOTTERER turned to economic organizations and the large economic enterprises - just as in previous cases when negotiations with other countries were necessary - in order to gather material for future negotiations. Dr. SCHLOTTERER expressly stated that the Ministry of Economics in cases when it was needed of material often turned to Farben since it had an economic department and incidentally trained personnel, and that the ministry also turned to economic groups and other large firms according to the type of the economic problem with which it had to deal. This statement is proved by a letter from the Test Office Chemical Industry of 19 June 1940 to Farben Schnitzler Exhibit 5), according to which the Reich Minister for Economics asked the Test Office Chemical Industry Pruefungstelle Chemische Industrie) the IG and 10 other German chemical firms for information concerning international cartel agreements and conventions between German and foreign industries and various other economic questions.

The fact that this was only a collection of material on the part of the Reich Ministry of Economics for the preparation of the intended peace negotiations, is already proved in accordance with Dr. SCHLOTTERER's statement - by the documents submitted by the Prosecution. Various references are there made to the tasks "after the end of the war", and mention is made of the "peace Planning" of the Reich Ministry of Economy.

In view of this fact, it is hard to understand how the Prosecution, can see in the material submitted by the IG at the request of aggressive war. In any case, the opinion of the Prosecution is contradicted by this fact, for a treatise which is needed by the Ministry for the purpose of peace negotiations, is the exact contrary of a treatise dealing with the preparation of aggressive war, and it is wholly irrelevant whether the treatise meant for the conclusion of peace, can be approved in detail or not. A lot can be said on this latter, and experience proves that before the conclusion of every peace treaty such questions have always been discussed at considerable length.

In conclusion I should only like to refer to the fact that this plan by the Government, the "New Order", was in no way kept secret. Dr. SCHLOTTERER reports (page 5908) that the Minister for Economics held a large newspaper conference at which German and foreign press representatives were present, and at that time also American press representatives, were present. The speech by the Minister for Economics to the press was printed and distributed in hundreds of copies at home and abroad. And lastly it is also significant that according to SCHLOTTERER's statement, these treatises, i.e. the work done by governmental offices, had no practical consequences and that, because - in SCHLOTTERER's words - "it was a planning for peace in the rather unrealistic hope that one day the Third Reich would start a Round Table conference with its enemies". This hope has already vanished as from 1941, and the conferences and work decreased accordingly and eventually stopped altogether.

4. My statements so far have shown that the Prosecution have not succeeded in proving either by direct circumstantial evidence that SCHMITZLER and the other representatives of the IG had positive knowledge of HITLER's aggressive plans and are guilty of conspiracy in Hitler's aggressive acts. I believe the Prosecution know that they cannot prove their submittal by direct evidence, and they also know a priori that in this case proof by circumstantial evidence would not be possible either. They therefore resolved to furnish proof by submitting statements by SCHMITZLER, made during his stay at the Preungesheim prison in 1945. For this purpose the Prosecution took the enormous trouble of giving new form to SCHMITZLER's numerous statements of 1945, and then submitted affidavits by SCHMITZLER from 1947 which for the most part repeated and confirmed the statements from Preungesheim of 1945. Altogether they submitted affidavits of more than 250 pages, hoping that in this way SCHMITZLER would incriminate himself and the other representatives of the IG. I had already protested against such procedure in the sessions of 28 and 29 August 1947, and on 2 September 1947 by referring to the fact that the statements of 1945 as well as those of 1947 were not made voluntarily but under heavy physical and psychological duress. My protest was rejected at that time. At the session of 29 April 1948, I asked the Tribunal to reconsider its rejection of 2 September 1947, in view of my motion at that time, and in view of new evidence. At the same time I asked for permission to prove that pressure was brought to bear in 1945 as well as in 1947. This permission was granted, and I had already cross-examined the witness HEAFLIGH concerning the pressure exerted at Preungesheim in 1945, when a new decision restricted me to the events of 1947. After the conclusion of evidence I see the legal and factual position with regard to the affidavits as follows:

aa) I am of the opinion that according to Anglo-Saxon law as it is applied here, it is inadmissible for the Prosecution to submit as evidence in the trial the affidavit of a defendant, when the defendant



does not take the witness stand.

In order to support my legal opinion, I refer to the statements of two judges in the Flick trial, in the sessions of 6 November 1947. In this session, the Prosecution submitted affidavits by the defendants. Presiding Judge SEARS said to the Prosecutor:

"If you submit an affidavit then it is the same as if you were calling the man to take the stand as a witness .... You cannot prove a confession by means of the confessing person's affidavit, which has been procured by the Prosecution. In the State of New York this would definitely be a witness."

Judge Michman added:

"In the State of Indiana the affidavit would not be admissible at all."

And Presiding Judge Sears:

"In the State of New York it would not be permissible at all, because you would need to produce the witness."

During the trial, Dr. v. SCHNITZLER has not taken the stand as a witness. Accordingly in my opinion his affidavits should have been stricken. In this trial, the Tribunal has not accepted this opinion; it has only stated that the affidavit of a defendant who did not take the stand as a witness, does not affect the other defendants but only the defendant himself. In this sense the Tribunal promulgated its decision on 11 May 1948 (transcript p. 14250 English). If the Tribunal does not accept the affidavit of a defendant with regard to the other defendants, then this was done because the Prosecution could not produce the affiant, i.e. Dr. v. SCHNITZLER for cross examination by the counsel for the other defendants. I am of the opinion that SCHNITZLER's affidavits should be also cancelled as regards the defendant himself, as here also it is

a case when the Prosecution is unable to produce for cross-examination the affiant whom they themselves have made their own witness. If I, as Counsel for the Defense, should wish to oppose the affidavits submitted by the Prosecution, then I must have the possibility of cross-examining the affiant, i.e., my own client. If I call my own client to take the witness stand, then he is my own witness for the purpose of direct examination, but not for cross-examination. I am afraid that in this way one will get involved in a juridical maze which can only be avoided by following the legal opinion as expressed by 2 judges in the Flick trial.

I must also object to the fact that the interrogators in Frankfurt in 1945, as well as Mr. Sprecher as representative of the Prosecution in 1947, induced my client to give evidence against himself. I regard this as unlawful and refer in this respect to the American Constitution, the 5th Amendment to the Constitution, where it is stated in par. 3:

"Furthermore nobody may be forced in any trial to give evidence against himself."

In conclusion I beg to quote from the book: "Federal Criminal Law" by William Atwell, where it says, under the heading: "Evidence against oneself":

"This regulation of Amendment 5 according to which nobody may be forced to give evidence against himself in a trial, is not restricted to the defendant. It is a prerogative which can be claimed by my witness. There is nothing more barbaric than to enforce such disclosures which are apt to humiliate and convict the person who was forced to make them."

Dr. von Schnitzler was not told either in 1945 or in 1947 that he is a defendant or that he was to be made a defendant. On the contrary, he was definitely examined as a witness, as is proved by the interrogation records which I have submitted. In 1945 he was also examined as a witness and he was even given premises in favor of the IG and in favor of his own person.

The defendant von Schnitzler was denied legal assistance in 1945 as well as in 1947. Mr. Sprecher stated the following on 18 February 1947.

"As long as such accusations are not brought against you or insofar as no charges are made against you, the occupational law of procedure applied here does not entitle you to legal assistance."

In this connection I wish to refer to the principles of American rules of procedure which I quote from an American article: "The Federal Rules of Criminal Procedure" by Lester B. Orfield, which are contained in a bill of 1945:

"The Commissioner is to inform the defendant of the complaint against him, of his right to retain counsel, of his right to a preliminary examination, and that he is not required to make a statement and that any statement made by him may be used against him. He shall allow the defendant reasonable time and opportunity to consult counsel and shall admit the defendant to bail as provided in these rules."

In an inadmissible manner it was pointed out to the defendant that every German is obliged to make a statement before allied agents on the basis of a provision contained in Order No. 1 and the proclamation of the Control Council No. 2, article 45 which, however, do not apply to legal proceedings. In examining the defendant von Schnitzler Mr. Sprocher repeatedly referred to the "Rights of the Powers of Occupation" and stated the following, I quote:

"Pursuant to the law of occupation after cessation of hostilities you, as a member of the occupied country are furthermore required to cooperate with the occupation authorities according to appropriate demands made on you. You will first take the oath and then I will put the questions to you."

In 1945, the defendant von Schnitzler was subjected to physical and mental strain in the course of interrogations at Frankfurt which lasted for months. In his examination on 11 May 1948 the witness Paul Haefliger describes the incredible and disgraceful conditions under which the gentlemen of the IG, including Herr Schnitzler, were detained at the penitentiary of Preungeshelm. One evening, Corporal Logan ordered the detainees belonging to the IG to be lined up in front of the cells and stated that he was going to treat them as war criminals. He said the following:



"I am looking forward to the day when you will be hung on the highest tree in the court yard, especially you Herr von Schnitzler. Did you understand? Did you get it?"

He then stated that the detainees would no longer receive a hot meal, inquired of each one about 'his sons showed malicious satisfaction at the reply that he was killed during the war. To Frank-Pahle he said:

"Do you have a son?" "Yes, he is two years old."  
"What a pity that he was not older and that he was not shot as well."

I do not wish to mention any further details since the Tribunal will recollect the moving descriptions given by Haeffliger. It only seems to me of importance to refer to the statement of the witness that as a result of the treatment received there, Schnitzler spent hours lying impassively on his hard bunk; and I furthermore wish to point out that the interrogators were aware of the treatment in the penitentiary. For the Corporal stated that the interrogators were not satisfied with the statements made by the detainees, that the latter were jointly liable for obtaining better results and that as a first measure the rations would be reduced immediately.

Haeffliger himself was threatened by an interrogator Mr. Sachs with extradition to Russia because he is a Swiss citizen, and another interrogator, Mr. Weissbrodt, was dissatisfied with his statement and said that "there were means of refreshing his memory."

In this connection I only wish to mention the affidavit of Frau von Schnitzler, which reveals that Frau von Schnitzler was arrested by the above mentioned Mr. Sachs when she tried to see her husband on 16 June 1945 and that she was treated disgracefully while under arrest. The effects on Schnitzler's physical condition are quite plain.

By the submission of interrogation records I furthermore proved that duress was also exercised on occasion of interrogations in Nuernberg

namely by Mr. Sprecher. In judging the interrogation record it must be considered that in the course of the interrogations the representative of the prosecution learned of the conditions under which the statements were made in Frankfurt and that he, despite that fact, conducted his interrogations on the basis of these statements and induced Schnitzler, by frequently pointing out the danger of perjury, to confirm his former statements in their essential parts. The interrogation records which I submitted speak for themselves, and I believe that, considering all circumstances as well as Schnitzler's compliant nature, it is quite evident, how he must have been effected mentally by repeated references to his statements of 1945 - reminding him of the terrible conditions of 1945 - and furthermore, by Mr. Sprecher's exaggerated statements concerning the severe punishment for perjury. Thus Schnitzler was led to believe that he was under no circumstances to amend important parts of his incorrect statements of 1945 since in that case the representative of the prosecution would then indict him for perjury on the basis of his former statements. It also seems particularly significant that Mr. Sprecher made the following statement, among others, on the occasion of the first interrogation, I quote:

"Some punishments for perjury may be more severe than these for participation in German militarisation."

I should like to confine myself to these brief statements and for the rest I refer to the records and the documents submitted as evidence.

Numerous wordings in the affidavits show that Schnitzler was in an extremely compliant and desolate mood during these interrogations, as Dr. Illgner has testified quite apart from the fact that many of the incriminating expressions are not confirmations of facts but only conclusions which the Prosecution suggested to the so-called witness, taking advantage of his unbalanced psychical condition and his compliant character.

Your Honors,

I now wish to deal with Count II of the Indictment in which the Prosecution deals with those cases where the I.G. engaged in industrial activity

of any kind whatsoever in the areas occupied or annexed by Germany during the war. The Prosecution describes every case of industrial activity in the occupied territories as plunder. Within the I.G. Dr. von Schnitzler was the commercial manager of the dyestuff division which before the war, accounted for approximately 1/4 or 1/5 of the I.G.'s total turnover. In accordance with Schnitzler's position I had to deal factually with those cases in the evidence which were connected with the dyestuff field, i.e. the cases of Francolor, as well as a small dye factory in Alsace-Lorraine and the three Polish dye factories Beruta, Nola and Finnica. On top of that I dealt with the legal aspects of this subject, both in common and international law, in accordance with an internal agreement of the Defense, so that my statements are of importance to the whole Defense in that respect. In other words, also to those cases which do not deal with the dyestuff field and therefore do not affect Schnitzler, namely the cases Rhone Poulenc, Norsk-Hydro and the Oxygen Plant in Alsace - Lorraine.

The legal judgment of the cases of spoliation is extremely difficult as neither in the laws, nor in the literature nor in the verdict of the Nuernberg trials so far concluded, nor in the indictments and the Trial Briefs of the Prosecution, are there any clearly formulated definitions of terms regarding either penal or international law. If, however, the Tribunal is to ascertain a personal criminal guilt on the basis of the IMT verdict, then the defendant must have known and been aware of what was forbidden by penal law and what was permitted at the time of the deed. However, precisely this is not the case.

In this trial private industrialists ~~are made to account for~~ economic measures which they carried out in occupied territories at the instigation of their government, or, in the case of contracts with foreigners, with the approval of their government. Neither the German Penal Code nor the provisions of the Hague Convention stipulate that a private individual has



to check the actions of his government in occupied territory and is responsible for its keeping the provisions of International Law. As regards this I wish to refer to my statements in the first part of my plea and would only add to them that, according to the opinion hitherto prevailing, a private industrialist could not have got the idea that he, as a private person, was entitled, or even under an obligation, to check the admissibility of economic ordinances issued in the occupied territories, and that he was not in a position to get a clear conception of such difficult questions.

During the 34th Conference for International Law at Vienna from 5 to 11 August 1926 - the records were published in London in 1927 - a participant asked about the responsibility in International Law of a private person, I quote:

"Suppose I were the defendant how should I know what I should have done and what I should not have done? .... I do not know what the Public Prosecutor is going to say to me. He starts and says: You did this, this and this. I say: Where is the paragraph which forbids me to do this? And he says: There is no paragraph, but a public opinion of all the lawyers in the world. I say: as I am no lawyer and have never read a legal book, I can not know that."

Thereupon Lord Phillimore replied:

"W men must be charged with a definite crime. Nobody doubts that."

This principle, that the defendant must be charged with a legally well-defined crime, applies in all civilized countries. Contrary to this principle, the Prosecution has not even attempted to define the term spoliation. In the indictment they merely refer to paragraph 2 of the Control Council Law No. 10 and state in general terms that the defendants participated "in the theft of public and private property, its exploitation and spoliation, and in other offenses against property in the occupied territories. "Reference to the Control Council Law is no proof however, because there only "crimes against property committed in violation of the

rules and customs of warfare" are mentioned, and spoliation of public and private property" is given as an example. Thus in this case, too, there is merely a reference instead of a definition, i.e. a reference to the customs and rules of warfare. However, no clear definition can be found anywhere for these rules and customs of warfare regarding spoliation. The main source is the Hague Convention of Land Warfare of 1907 and according to the IMT Judgment, in agreement with general doctrines of International law, the international common law, that is to say that law, which every person with moral sense recognizes as the legal norm and which therefore has become customary. In the Hague Convention of Land Warfare the pertinent rules can be found in chapter 3 of the supplement under the heading: "Military powers in occupied enemy territory" and thus in articles 42-56. Furthermore the following is stated in the preamble of the Hague Convention of Land Warfare:

"Until a more complete manual for the rules of warfare can be established, the signatories of the Convention deem it advisable to establish, that in cases which are not included in the regulations of the Convention adopted by them, the population and the belligerents remain under the protection of the principles of international law, as resultant from the established customs among civilized peoples, from the laws of humanity and from the demands of the public conscience."

Here, too, we find the same as in the IMT verdict, in other words, reference to an uncertain, undefined law, namely the "public conscience."

In this connection the argumentation which the American Military Tribunal offered in Nurnberg in Case 3, the Justices Case, seems to be very important, i.e., regarding the law which Hitler promulgated on 28 June 1935. Article 2 of this law reads:

"Anyone committing an act which the law declares to be punishable, or which deserves punishment according to the principle of a penal law or the sound sentiment of the people, will be punished. If no definite penal law is applicable to the act, then the act will be punished according to the law, the principle of which is most applicable to it.

The American Military Tribunal makes the following comment on the text of this law issued by Hitler:

"In principle this decree represented a complete departure from the rule that penal laws should be unequivocal and definite, and it left to the judge a wide margin for his opinion, in which party-political ideologies and influences took the place of the rules of law as a guiding principle for the judges decision".

I believe that a parallel can be drawn here between Hitler's law and the Control Council Law, i.e. a parallel regarding the complete uncertainty and the faulty definition, the only difference being that the "sound sentiment of the people" has been replaced by the "public conscience" according to the Control Council Law and the Hague Convention for Land Warfare.

I do not want to be misunderstood, and therefore I should like to point out that I am merely thinking of the facts which are of interest in this connection and which the Prosecution summarized under the term "spoliation", and not, of course, of the term, "spoliation" in the strict sense of the word, or, as was stated in the judgment of the Flick Case, of "spoliation in the usual sense of the word", which did not play any part in the Flick Case or in the I.G. Case and of which the National Socialist leaders, such as Goering and Frank, were guilty by the confiscation of art treasures; the definition of this type of spoliation is given in a concise form in the Hague Convention for Land Warfare under article 47:

"Spoliation is expressly forbidden".

What makes the legal judgment of the industrial trials so difficult is the



fact that the Prosecution simply brands any activity of an industrialist in the occupied territories as "spoliation", regardless of whether this activity was carried out in the interest of the economic power of Germany during the war or in the interest of the economy of the occupied country.

It is immensely difficult to give a clear definition, on the basis of the Hague Convention for Land Warfare, of the rights of an occupying power. This difficulty arose already in the Flick Case, and led to countless arguments and finally to the definite establishment in the judgment that in any case the activity of an industrial trustee or lessee could not be regarded as spoliation. Unfortunately the Prosecution was in no way influenced by this judgment.

According to article 46 of the supplement of the Hague Convention for Land Warfare, private property must not be confiscated. According to article 53, the occupying power may confiscate any stocks of war material, even if they are owned by private persons. There are no special rules referring to immovable private property and privately owned industrial enterprises and factories, with the exception of the preamble, which on the one hand refers to the demands of the public conscience, and on the other hand to the military interests of the occupying power. It is not surprising either, that no ruling can be found in the Hague Convention for Land Warfare for cases in the industrial sphere which in this case are the subject of the argument. Thus in the period prior to 1907 neither economic warfare nor total warfare was known in warfare of the last century. The total character of modern warfare comprises the entire economy and the civilian population and thus necessarily also private property. The Hague Rules of Land Warfare contain rules for the military occupation only. They contain no rules for the economic warfare apart from the one restriction providing that the demands of public conscience should be taken into consideration and the sufferings caused by war should be mitigated to the extent permitted by the military interests.

It follows from the above that with regard to private property the

provisions of the Hague Rules of Land Warfare of 1907 cannot be applied literally. Every law, and thus also International Law, depends on the historical development which may lead to an extension or a limitation. Accordingly, the International Military Tribunal said verbatim regarding International Law:

"This law is not rigid but by constant adaption follows the requirements of a changing world."

It is on the same line when the U.S. Military Tribunal IV in the Flick judgment stated:

"The purpose of the Hague Convention, as disclosed in the preamble of Chapter II, was 'to revise the general laws and customs of war', either with a view to defining them with greater precision or to confine them within such limits as would mitigate their severity so far as possible. It is also stated that 'these provisions, the wording of which has been inspired by a desire to diminish the evils of war, as far as military requirements will permit, are intended to serve as a general rule of conduct for the belligerents in their mutual relations and in their relations with the inhabitants'. This explains the generality of the provisions. They were written in a day when armies travelled on foot, in horse drawn vehicles and on railroad trains; when automobile was in its infancy. Use of the airplane as an instrument of war was merely a dream. The atomic bomb was beyond the realms of imagination. Concentration of industries into huge organizations transcending national boundaries had barely begun. Blockades were the principal means of economic warfare. 'Total warfare' only became a reality in the recent conflict. These developments make plain the necessity of appraising the conduct of defendants with relation to the circumstances and conditions of their environment. Guilt, or the extent thereof, may not be determined theoretically or abstractly. Reasonable and practical standards must be considered."

I need not add anything to these trains of thought; they unequivocally show that the Hague rules of Land Warfare can only be applied according to their inherent intentions taking consideration their basic principles.

It is, however, intended to apply the Hague Rules of Land Warfare literally, as is being done by the Prosecution, and to regard every agreement and every measure referring to the private property of an occupied territory as an offense under International Law or even as a crime under International Law, then the air-raids of the German and Allied airfleets, are definitely unequivocal war-crimes, since Article 25 of the Hague Rules of Land Warfare provides:

"The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited."

I leave it to the Prosecution whether it wishes to draw these cogent conclusions. At any rate, the case is very much more complicated with regard to the utilization of economic enterprise, i.e., spoliation according to the Prosecution, than with regard to air warfare. For here economy is involved which during the three decades from 1907 until the outbreak of World War II had fundamentally changed. The fact involved is that World War II no longer was a purely military war, but a total economic war with the result that the economic necessities and the economic interest could no longer be separated from the military necessities and the military interests mentioned in the Hague Rules of Land Warfare. It was total economic warfare by which the industrial plants of the belligerent countries were implicated in the war and thus, necessarily, also in the "military necessities" of the Hague Rules of Land Warfare.

For this reason, not every interference with private property can be regarded as prohibited much less as a war crime. It will merely be necessary to see to it that with the measures regarding private property the interests of the belligerent country do not exceed any reasonable limits. Likewise, it will be necessary to see to it that, in conformity with the laws of humanity and the demands of public conscience sufficient consideration is given to the economy of the occupied territory and to the resources and the economic forces of the industries there. This, however, was proved in all instances by the case-in-chief; I.C. Farben gave consideration to the economic interests of the population of the occupied territory and in all instances supported the manufacturing enterprises in technical and economic respects. If it is intended to find out whether the ideology of International Law is complied with, then the economic situation and the economic development of the plants involved during the war should be examined in all cases. The Defense did so, and I believe that the case-in-chief has given the Tribunal the impression



that in no case the economic interests of the individual plants were prejudiced in any way, insofar as the German Military and economic interests permitted, these economic considerations are, in addition, supported by the Hague Rules of Land Warfare, by an article which time and again is intentionally evaded by the Prosecution in all industrialists' trials. In the Indictment it refers to Article 46 to 56 of the Hague Rules of Land Warfare, although the section involved which refers to conduct in the occupied territories, does not begin with Article 46 but with Article 42. I am thinking of Article 43 which reads as follows:

"The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country".

Public order and normal conditions can, however, only be restored or maintained in the occupied territory if the industry of the country operates smoothly. This provision of the Hague Rules of Land Warfare thus entitles and obliges the occupation power to take charge of the economic enterprises of the country and to administer the country under proper conditions. The importance of this article becomes especially clear if it is borne in mind that in innumerable cases at the moment of the occupation of the country industrial plants were abandoned by the owners or the managers of the plants and had stopped operation. Surely much too little attention has been paid up to now to the necessary consequence that in a modern war the provision of Article 43 frequently overlaps Articles 46, 52 and 53. For from these three articles the Prosecution tries to infer the prohibition altogether to concern oneself with an economic enterprise in the occupied territory, whereas Article 43 which was left out of consideration by the Prosecution contains the obligation and thus also the authorization to interfere with the economy of the country. It is obvious that it will not always be simple to find the right limits and it is just as plain that a private industrialist cannot be required by himself to discern the limits of this provision.

The consequences of this legal elaboration to the individual facts of the alleged spoliation are as follows:

In the cases of Francolor, Rhona-Soulence and Korsk Hydro NO GOVERNMENT SEIZURES ACCORDING to the Hague Rules of Land Warfare are involved. On the contrary, agreements were involved which I.G. Farben concluded with private owners in the occupied territories. There is, however, not a single provision in the Hague Rules of Land Warfare prohibiting the occupation power, much less the individual industrialist, from carrying on economic negotiations with the resident of the occupied territory and to conclude economic agreements. These agreements thus cannot violate laws of war, since there exists no corresponding prohibition in criminal law either definitely or implied by the Hague Rules of Land Warfare. Just as little can they constitute violation of the Control Council Law because the Control Council Law explicitly mentions only violations against property under a violation of the laws of warfare, thus is based on the condition that there exists a violation of the laws of warfare. This was obviously felt by the Prosecution before the Defense had proved the faultless economic form of the agreements. Since in its Trial Brief it used formidable words in order to prove these agreements to have been criminal. It says: "It is generally a crime against the country in question, as it tears asunder its economic set-up, estranges its industry from its natural aims and forces it to serve the interests of the occupying power and interferes with the natural collaboration between the looted industry and the local economy."

However, this was exactly what the prosecution was unable to prove in any way with references to these three agreement-cases, they never got beyond the stage of empty words. The economic set-up was not torn asunder, nor was the industry estranged from its natural aims. On the contrary! The defense has proved, through a considerable number of documents that the industry in question could go on serving its natural aims only because of these agreements with the I.G. Farben and it has also proved that the economic set-up was preserved.

In the cases Rhone-Poulenc and Horsk Hydro I am referring to the elaborations and evidence presented by Messrs. Dr. Berndt, Dr. Nath, and Dr. v. Metzler. May make a few remarks about Francolor, seeing that I cleared up the state of affairs in my argumentation when I was acting as a defense counsel for Schnitzler.

The French dye-industry which came into being during the first world war partly by confiscation of German dye-works in France, was economically closely linked with the I.G. Farben by the German-French Cartel Agreements of 27 April 1929 and 15 November 1927. Because of its economic and technical volume I.G. Farben had held a leading position already in this cartel-agreement and the "claim for leadership" made by Schnitzler and the I.G. Farben in 1940, and objected to by the prosecution, was based on it, in spite of the fact that in the twenties when this cartel agreement came into being, the political superiority must have rested with France and not with Germany.

These facts caused the gentlemen of the French dye-industry already in August 1940 of their own accord to resume contacts with the I.G. Farben which had been temporarily disturbed by the war, by way of the German-French Armistice-commission, and they induced Dr. von Schnitzler on the one hand and M. Frossard on the other to get into touch with each other via the Swiss dye-industrialist Koochlin in October 1940.

Considering the time I am allowed for this plea it would be going too far to refer to details from my document books and from witnesses' statements. It is, however, important to state that this very extensive argumentation gives a very convincing picture which shows that continuous negotiations on a purely economic basis were carried on by the French dye industry and I.G. Farben in which the French government took a more active part than the German government with the effect that, as is usual in far-reaching economic agreements, each of the parties made concessions on many points and in the end an agreement



was made which enabled the French dye-works to do excellent work during the whole war under purely French management and with financial and technical help on the part of I.G. Farben, an agreement which was termed "ideal" by the president of Francolor on the occasion of the signing of the contract on 16 November 1941 in front of all important French dye-industrialists, as it was supposed to combine in a superior way the interests of both parties.

It must also be mentioned that the French dye-stuff industry was given a production-guarantee of 7,000 tons by I. G. Farben which was based on its pre-war sales, over and above the former cartel agreement, - and had, six months before the signing of the contract received orders from I. G. Farben based on a permit issued by German authorities for the allocation of raw materials and for the support of enterprises which had been procured by I. G. Farben, not to speak of other technical support - already proved in detail - i.e. the permission to use certain methods of production, procurement of new products and so on.

And all this is called by the prosecution, destruction of the economic set-up and estrangement of industry from its natural aims, and spoliation, for the sole purpose of supporting its far-reaching legal theses.

Considering the economic success all the rest of the theses of the prosecution which are based upon alogens like "Collaborator" "Quisling" pressure and making use of the "atmosphere of general intimidation" because of the "presence of the armed power of the conqueror and the Military Government" must necessarily collapse. The opposite is proved by the numerous documents in my document-books III - V. The various points of the agreement were discussed in long conferences. I. G. Farben met all the requests of the Frenchmen and the French Government, which had its seat in the unoccupied territory, half-way while the Frenchmen and the French Government complied with the wish of I. G. Farben for a 51% shareholding interest a claim on which the I. G. Farben insisted only because, in our organization of equal partnership, considering the superior position of the French president of the company and the purely French management, it needed a counter balance in case of unexpected violations of the agreement by the French management, a case which actually never occurred. It seems almost paradoxical to speak of pressure and a condition of constraint when I. G. Farben meets the claims of the Frenchmen concerning the evaluation of the French capital to their full extent and when it does not, on the other hand, base the value of the I. G. Farben

shares upon the 200% stock exchange rate of that time but, taking into consideration the desire of the Frenchmen, upon a percentage of 160 although the inherent value of the shares at that time is as I proved, even without taking into consideration the secret reserve fund, based on the tax records, was above 300%. All the documents, especially the agreement, prove that the "presence of the armed power of the conqueror and the Military Government" had no influence on the agreement. No word need be said about the fact that the industry of every defeated country must find itself in a very difficult position during the time of occupation, and we Germans are the last people in the world to dispute this fact. This can, however, not be decisive, especially as in every merger and in every economic capital-interlocking or the setting up of a new business by two competitors, the economically weaker partner must find himself in or economically tight corner or even in a condition of economic constraint. The only question which might be decisive in such a position would be that of whether such a condition of economic constraint had been exploited by other partners in a criminal way for the sake of his own illegal advantage such as in spoliation in the true sense of the word. Nothing need be said to show that there is no question of exploitation of a condition of constraint in a contract which was concluded on an absolutely sound economic basis, so that the managers of the French dye-stuff industry confirmed the fact to the French government on 3 October 1941 that in consideration of the cartel agreement of 1927 favoring the French group, "all necessary safeguards have been guaranteed", a contract which was almost unanimously approved in the general assembly of the most important French dyestuff factory KUHLMANN, and through which the French dye-stuff industry became the largest individual shareholder of I. G. Farben, and which caused the French dyestuff factories to regard their participation in I. G. Farben as so favorable that they voluntarily made use of their right to vote upon the acquisition of new stocks in 1942. Hardly anything need be said in order to be clear about



the fact that a contract drawn up in exploitation of a condition of constraint would have appeared basically different in every point. When a condition of constraint is being exploited, the partner to the contract is not contented with an equal position in the company and does not leave the business management and direction of the company to the exploited and spoliated partner.

In the remaining cases in Poland and Alsace-Lorraine I. G. Farben acquired the property from the factories in question following official measures which originated by order of the government.

In Poland the legal basis was the decree of the Fuehrer and Reich Chancellor concerning the Occupied Polish Territories of 12 October 1939 and the Decree concerning the Administration of the newly occupied Eastern Territories of 17 July 1941. In both of these laws, the preamble reads:

"In order to restore and maintain public order and public life in the occupied territories....".

Please observe that this text agrees exactly with the text of Article 43 of the Hague Convention, which I have quoted, so that an industrialist could justifiably assume that the measures which were taken by the government by virtue of these orders were admissible. Through these orders a civilian administration was set up, and this civilian administration in turn installed German commissioners in the 3 dyestuff factories, Boruta, Wola and Winnica in Poland. These commissioners were made available by I. G. Farben, but Farben did not thereby receive any rights to the factories. The commissioners were responsible solely to the government and the local civilian administration, and were active in their capacity as trustees. It is important to note that these measures were taken by the government in agreement with the preamble quoted above, in order to continue operation of the industrial enterprises in the Eastern territories, which had been abandoned to a large extent by the owners and the managing directors. This was expressly confirmed by

the witness, Dr. WINKLER. Winkler was permanent economic trustee of every German government since 1920 and is the person who has the best overall command of economic problems in the East. He confirms that the factories continued to be run "in the interests of the economy of the occupied country and of the German Reich." This is the basic reason which I mentioned in my legal statements regarding Article 43 of the Hague Convention, which contains the obligation for the occupying power to continue to operate or to set in operation the factories of the occupied territory.

The legal basis with respect to the 3 dye-stuffs factories in Poland is thus in full accord with the Hague Convention, so that I. G. Farben neither needed to have misgivings about making commissioners available as trustees, nor did it need to have misgivings about concluding agreements with the civilian administration about the factories. In particular there is the additional economic factor that from as early as 1934 there had been a close economic connection between the dyestuff factories in Poland, the French dyestuff factories, I. G. Farben, and the Swiss dyestuff factories, on the basis of an agreement between the Polish group and the Tripartite Cartel.

With respect to the further development during the war, the 3 dye-stuff factories must be regarded separately:

With reference to the Winnica, the Hague Rules of Land Warfare cannot be applied to all, because the Winnica is not a Polish-owned dye-stuff factory. But according to the Central Council Law and the Hague Rules of Land Warfare, it must be private property which belongs to a citizen of the occupied country.

The Winnica belonged, as even the evidence of the prosecution shows, 50% to I. G. Farben and 50% to the French dyestuff factory KUHLMANN. Accordingly, the German civilian administration also suspended the original confiscation of the Winnica, because it was not Polish property. Accordingly, I. G. Farben also did not acquire the 50% belonging to the French

from the German civilian administration, but by agreements with the KUHLMANN Firm in Paris. Thereby the factory was wholly the property of I. G. Farben, so that it is not at all clear how the prosecution can speak here of spoliation.

Moreover, this is also corroborated by the fact that in the cartel agreement of 19 November 1934 Winnica is not quoted as a part of the Polish group, but as a member of the Tripartite Cartel, to which I. G. Farben belongs. Let it be said merely for the sake of completeness, - even if it has no legal significance - that the KUHLMANN Firm was very happy when it could sell its participation in the Winnica to I. G. Farben during the war, because as a result of the collapse of the Polish state, the Winnica was exposed from the beginning on to the danger of shutting down.

Wola is just as uninteresting with respect to international law, for the simple reason that I. G. Farben neither bought the Wola, nor acquired any other rights to it. The fact that commissioners were appointed as trustees by the German civilian administration is a matter for the government office, not for I. G. Farben.

The 3rd factory, Boruta, was at first also administered by commissioners, who were acting as trustees for the civilian administration and not for I. G. Farben, as the prosecution contends. Moreover, the Main Trustee Office East, directed by Dr. Winkler, was brought in here by legal measures. The creation of the Main Trustee Office East was in turn based on the basic ideas contained in Article 43 of the Hague Convention that the economic enterprises should be continued in operation. Accordingly, the Main Trustee Office East and/or the commissioner appointed by it endeavored to continue the factory in operation. The witness SCHWAB, who was employed as a commissioner, and Mr. Winkler, stated, however, in full agreement that the continuation of the Boruta in operation was endangered owing to the general economic difficulties (division of Poland into a German and a Russian part) and owing to the special difficulties



in chemical plants. It proved to be necessary to invest large amounts, to call upon chemical experience and in this particular chemical area the knowledge and methods of production of a large technical firm like I. G. Farben. At first a lease contract was considered. However, the Main Trustee Office West, at which the matter was being handled by 2 recognized experts, on its own initiative made the suggestion of selling it to I. G. Farben, because it not only felt obliged to have the factories running in the interests of the public economy of the country, but also felt obliged to preserve the capital of the enterprise. The Main Trustee Office East therefore made use of Par. 7 of the Order of 7 September 1940, according to which in special cases a sale may take place, in order on the one hand to maintain the factory, and on the other hand to rescue the capital.

THE PRESIDENT: It is almost time to recess for lunch, but just before we do may I call your attention to the fact that, according to our calculations, you have now used one hour and forty-five minutes of your allotted time and you still have approximately thirty minutes left. In that connection we observe that your manuscript contains 83 pages and that you have used approximately 56 of those pages in your address. That would leave you 27 pages to be covered in approximately thirty minutes which may be quite a problem and may require you to make some condensations in order to not encroach upon the time of your brethren. I call that matter to your attention at this time so that you can take account of your difficulties during your noon hour recess.

The Tribunal will now rise until 1:30.

(A recess was taken until 1330 hours, 3 June 1948).

(AFTERNOON SESSION)

THE MARSHAL: The Tribunal is again in session.

DR. SIEMERS: Your Honors, there is a certain difficulty, because the English text is badly printed that we produced and there would be difficulties in reading it. I have heard that there is now a good copy, and to expedite proceedings I should like to abbreviate the rest of my pleas in a few points, and I shall ask the Tribunal to consider the place where I referred to the closing brief as part of the closing brief.

THE PRESIDENT: We had discovered the bad mimeographing in a part of your presentation, Dr. Siemers. That is a matter of course that you are not to be criticized about, but we have on our own initiative asked that there be supplied to the Tribunal corrected sheets which we will insert in the book without bothering you about the matter.

DR. SIEMERS: Thank you, Mr. President.

For the benefit of the interpreter I am skipping the next pages and I shall begin at the bottom of page 60, the last sentence. I shall skip therest of Boruta and the incidents in Alsace Lorraine.

"In general, the industrialist, by "looting and plunder" would understand looting or plunder only in the literal and not in the figurative meaning. It did not occur to the industrialist that that would constitute a criminal act when he, by agreement participates in another enterprise, or when he leases or buys an enterprise of the Government, and pays a reasonable rent or sales price.

34 B. Control Council Law No. 10 in Article 2 mentions only "plunder of public or private property", in other words, only plunder in a more restricted literal meaning.

35. C. The Control Council Law in Article 2, 1 b, exemplifies "war crimes" by enumerating grave criminal acts only, such as murder, ill-treatment of prisoners of war and civilians, killing of hostages, arbitrary destruction of town or land, and devastations that are not

justified by military necessity. In all cases the Control Council Law as examples enumerates only actions that are considered grave crimes in the criminal codes of all civilized Nations. Therefore, it is contrary to the spirit of the Control Council Law if the Prosecution will label any, even any relatively slight violation of the Hague Convention of Land Warfare a war crime.

As already specified before, allowances must be made for the defendant in so far as international regulations have only partly been codified, and that neither the Hague Rules for Land Warfare nor other literature interpreting international law provides any clear and precise definitions. In one word, the fact has emerged that basic legal concepts are uncertain and rather indefinite. Even a specialist in the field of international law could not possibly explain to an industrialist quite unmistakably which actions, during the war, were permitted or prohibited in occupied territories.

How difficult it is to clearly recognize such limitations can be seen especially by the events in Germany after the end of World War II. What has happened in occupied Germany since May, 1945, violates numerous rules of the Hague Land Warfare Regulations, and this applies to all four occupied zones, irrespective of whether the Hague Land Warfare Regulations are interpreted literally, which is the viewpoint of the Prosecution, or whether they are applied in accordance with their meaning, and under consideration of modern war conditions and the most up-to-date economic warfare. In this connection I have submitted much evidence contained in three document books."

I will skip the next paragraph.

"This material shows that the Allied Occupation Powers have violated the Hague Land Warfare Regulations; it also shows how vacillating all basic concepts of international law are at present, although one might take as a premise the various measures of the Allies with regard to dismantling and the confiscation and seizure of private property,



it would be impossible even for a legally trained person to single out those measures which are permitted or prohibited respectively.

Many of the Allied measures directed against German industry conform with the rules of the Hague Land Warfare Regulations, according to which only war material and characteristic military booty is to be confiscated and seized in various factories. However, just as many measures internationally ignore the Hague Land Warfare Regulations, and, consequently, even factories which were solely manufacturing for peace time goods were dismantled, although there cannot be any doubt whatsoever, that any such private property should be exempt from seizure. And, finally, there are also those dismantling orders which attempt, as a matter of form, to observe the Hague Land Warfare Regulations which, however, in actual fact, should be considered as plundering of private property, if the Prosecution's interpretation is applied.

I would like to refer to the instance in the British Zone, where a factory producing tool machinery received a production license for industrial plants, where dismantling, packaging and shipping of factory installations was designated as production branch in the License Schnitzler (Ident. No. 128); then, in accordance with this license specification, the license was only effective for the time of the actual dismantling.

I want to mention a case when, as a restitution measure, scrap iron at a value of 5 million Reichsmarks was taken away from Krupp as "Booty", in accordance with the Hague Land Warfare Rules, although, according to Control Council Law No. 53, scrap iron does not fall under the designation of war material; but in this case military government was of a different opinion, by referring to a British Headquarters definition dated 5 June, 1946 (Schnitzler Ident. No. 135). According to the Control Council Law (Schnitzler Ident. No. 136), scrap iron does not come under "war material" because scrap iron can be used for peace production purposes. In Westphalia, a comb factory was

dismantled following an official dismantling order and handed over to the British competition firm, which was owned by a member of the investigation commission in the occupied territory. (Ident. No. 134).

A foundry in the Rhineland, valued at 50 Million Reichsmarks was dismantled and was appraised by the Inter-Allied Commission at 15 Million Reichsmarks, while the dismantling expenses which had been paid by the firm concerned, amounted to at least 20 million marks. (Schnitzler Ident. No. 137).

A factory for compressed-air instruments and machinery was perforce leased to the Pressluft-Werkzeuge und Maschinenbau A.G. at Berlin, which is owned by Americans. This deal was effected with the help of an agent of the Property Control Office and the director of the subsidiary of the American firm. The license to continue production, which had already been given, was then transferred to the American owned concern. (Schnitzler Ident. No. 130).

I have submitted documents concerning dismantlings of special factories with a peace production potential that constituted a paramount necessity for maintaining the standard of German economy. I have also submitted the official dismantling list, which speaks for itself, as well as excerpts from the recently published essay of Senator Hermanson from Bremen, a thorough and painstaking study, according to which Germany's payments to the Allies amount to 71 Billion Dollars up to date.

Furthermore, I have submitted a letter of the British Commissioner for North Rhine-Westphalia, W. Asbury, directed to the Mayor of the City of Essen in which General Robertson states, concerning the Hague Land Warfare Rules as applicable to the occupied German territory:

"Based on the supreme authority which they have been given (The Allied Occupation Powers) there are no limits to their powers, except those limits which they might impose upon themselves. (Ident.No. 118).

Nevertheless, in the Senate General Clay stated that a further reduction of German industrial plants would probably contribute to the economic recovery of Western Europe (Schnitzler Ident. No. 139).

In America, German and Japanese property was sold. It was stated in Washington that such sales did not violate international law, an opinion which at any rate contradicts the concept of the prosecution as represented here. (Schnitzler Ident. No. 157)

And finally I would like to remind you of Control Council Law Number 9, which I have submitted, concerning the "confiscation and control of property belonging to the I.G. Farben industry (Exhibit Schnitzler 114), which was passed on 30 November 1945, the preamble of which gives the following reasons:

"In order to make it impossible for Germany in the future to threaten her neighbors or to endanger world peace, and considering the fact that the I.G. Farben Industry was engaged consciously and predominately in expanding and maintaining the German war potential ....."

From a legal point of view I consider it particularly important that this law which, contrary to the Hague Land Convention decrees the confiscation of private property was enacted at a time before the above mentioned conditions were established by a court of law, and even before an indictment was made.

In order to illustrate certain legalistic points, I have submitted the Morgenthau Plan (Ident. No. 111) which, according to the now published memoirs of the American Secretary of State Cordell Hull, played an important part at the historic Quebec Conference in September 1944. In connection with the Ruhr area a passage therein states, in direct contradiction to the Hague Rules for Land Warfare:

"Here, we are dealing with the heart of the German industrial potential. It is our contention that not only should this area be stripped of all the industries which it contains, but it should also be weakened and supervised to such a degree that it will not become an industrial area for a considerable period to come."

In the Directives of the Allied Chief of Staff for General of The Army Dwight D. EISENHOWER (J.C.S. 1067) which were published in



April 1945 (Ident. No. 111), the following instructions were handed down:

"No measures are to be taken aiming at an industrial rehabilitation, nor must any steps be taken which might be conducive to maintaining and strengthening the German economy."

This unmistakable instruction concerning the administration of German occupied territories also contains an equally as unmistakable violation against Article 43 of the Hague Land Warfare Regulations.

The prosecution is quite familiar with the events of the past three years in occupied Germany, and they know full well that the facts, as sketched by me, constitute "Spoliation of private property" as interpreted by the prosecution, and by basing my interpretation on its use of that term, and that this version is so starkly in keeping with the facts that the actions of the defendants in the territories occupied by Germany during the war are completely dwarfed by recent events. German industrialists would have been grateful and happy if, instead of dismantlings and the seizure of patents and production processes, agreements such as the Francolor-Agreement had been concluded.

37. In the discussions of the subjects of plunder, the Hague Convention of Land Warfare, and the conduct of the Allied Powers in occupied Germany under the aspect of International Law, which I have conducted with the Prosecution in the Flick, Krupp and I.G. Farben trials, the Prosecution adopted the view that the dismantling of German plants cannot be considered a parallel case because the Allied Powers in occupied Germany are not bound by the Hague Convention of Land Warfare. In order to CLARIFY MY OPINION I feel myself bound to deal also with this subject. I summarize the argumentation of the various representatives of the Prosecution, their reasoning is as follows:

Contrary to Poland, Russia and France, Germany surrendered unconditionally, there is no government in Germany, no exile Government either, as for example in Poland at one time; Germany has not been occupied by a "belligerent" occupying power, and there is no longer a

German army in the field, and as a final objection, Germany cannot appeal to the Hague Convention of Land Warfare because it has conducted wars of aggression, and has itself too often violated the Hague Convention, this last point of view being, e.g. advocated once also by General Clay at a Press Conference (Schmitzler Ident. No. 117). These objections I shall refute as follows:

a. The unconditional surrender took place in the purely military field and therefore can have no legal effect with respect to the civilian population. Doenitz, on whose order the unconditional surrender was declared, did not have the intention of waiving the rights derived from the Hague Convention of Land Warfare to the disadvantage of Germany through this surrender. But a waiver as an act of legal validity presupposes the intention of waiving and the express declaration to this effect. Neither condition is fulfilled.

b. The fact that there is no longer a central German Government is due to the unilateral action of the victorious powers. The unilateral action cannot do away with an agreement, because an agreement, in international law, as well as in civil law, can be revoked only through bilateral action."

I will skip the rest of this page to the letter (c):

"c. But if it is actually of importance from the point of view of international law, whether there is still a government in enemy territory, so that it has to be inferred from this that international law is not applicable where no government is found, then it is hard to understand how the same American Prosecution can maintain that international law should have been applied by the Germans in Poland and France. For it is a fact that no government was found any more in Poland, and in the opinion of the Prosecution, only a puppet government existed in France, in other words in actuality, practically no government there either.

As to Poland, the Soviet Union in its note dated 17 September

1939 to all foreign governments accredited in Moscow (Schnitzler Exhibit No. 120) made it clear that the Polish state and the Polish government had ceased to exist and that consequently the agreements had lost their validity. That means that toward Poland the Soviet Union adopted the same attitude as it has now, in so far with consistency, adopted also towards Germany. However, the Prosecution in this respect is inconsistent. To this General Taylor once objected that no parallel case is found here because there existed a Polish exile government. I do not believe that this objection can be upheld with a clear conscience. The aim of the Hague Convention is the protection of the civilian population.

As far as the behavior of the victorious power towards the civilian population of the conquered state is concerned, it can make no difference whether somewhere in the world a few men are maintaining an exile government which is actually unimportant and inactive in every respect. It is also incomprehensible where in the Hague Convention any such distinction is made."

I skip the next paragraph.

"Concerning a-e: All of the five objections just dealt with are inconsistent with the text of the Hague Convention, and that is decisive. Section e of the appendix to the Hague Convention contains the rules to be observed by the occupying power in an occupied territory. In Article 42 it is defined with perfect clearness, under which conditions the provisions of Article 43 ff. will become applicable. Article 42 reads:

"A territory is considered occupied when it is in fact in the power of the enemy army."

Therefore, it is completely clear that the Hague Convention knows only one single prerequisite, and that is the actual occupation of enemy territory. The same is shown by the heading of this section which reads:

"Military Power in Occupied Enemy Territory". The Hague Convention thus does not make any distinction as to how the occupation of enemy



territory was established, whether through actions of war or through sudden invasion, or in a peaceful way following a capitulation, or partly in the course of combat and partly following and partly following a capitulation. It does not make any distinction as to whether there still exists a government in enemy territory or not, whether there exists an exile government or not, and neither does it know the distinction as to whether the enemy army is still fighting or has laid down its arms. The text and the meaning of the Hague Convention is perfectly clear, always referring only to the actual occupation of enemy territory. This one prerequisite, however, is fulfilled in the occupied German territories to exactly the same extent as when foreign territories were formerly occupied by Germany.

I shall skip to the next part and I continue on page 72, the second paragraph:

The preamble to the Hague Convention as well as the IMT judgment shows that public conscience and basic ethical ideas are decisive. But in the field of international law basic ethical principles embrace also the protection of the civilian population and the protection of public order, the protection of economic enterprise, the protection of personal freedom, and the protection of private property.

If now a state has been so completely defeated that it has to surrender unconditionally and that no government exists any more, the civilian population is much more in need of this protection of international law than when the army of its own state has not yet capitulated and the government is still functioning. If the opinion of the Prosecution to the contrary would assert itself in international law, this would mean a moral decline and a great danger for the future. It would mean that the adviser on international law to a victorious government would be forced to advise his government as a first measure in the territory of the enemy to dissolve the government so that the occupying power is no more bound to observe the rules of international law.

Indeed, he would have to advise his government, if possible, to arrest or eliminate all members of the government, so that no exile government is left over and the occupying power is free and without considering international law can take away private property, i.e. "plunder".

I believe that I have thus proven that the Hague Convention of Land Warfare and/or the International Law of Custom must be adhered to in occupied Germany. This conclusion, however, gives me the right to consider as parallel cases the events of the last three years in Germany in order to ascertain how the Hague Convention of Land Warfare is to be applied and/or what the victor state may do or may not do in occupied territory."

I shall abbreviate the next page and I merely remark that it is necessary in International Law that the rights of both sides, that is the German and the Allied, be considered. This is a principle which has already been laid down in the IMT judgment and recognized. I may remind you that Doenitz was acquitted on account of aggressive war, because of the parallel case of submarine warfare between Japan and America. I may also remind you that in the IMT case, documents were approved for me which showed the conduct of the British Government and the British Admiralty with respect to Norway, Belgium, Holland, and Caucasian petroleum problems.

I continue in the middle of page 75:

"Accordingly, in this trial events in occupied Germany must be taken into consideration if we want to analyse the situation with regard to international law. The documents which I introduced and the arguments which I presented, clearly show how inconclusive and uncertain a basis Count II of the indictment has in international law; they not only show contrasting opinions among the German, Soviet and Allied Governments, but moreover - and this was particularly important to me - they demonstrate the divergency of views among the military governments of the western allies."

Accordingly, I then continue on page 76, in the middle:

39. May it please the Tribunal: May I be permitted to sketch the personality and position in industry of my client.

Herr von Schnitzler hails from a reputable family with many traditions, and due to his qualifications and his amiable character, which made him well-liked everywhere, he attained a leading position in Germany's greatest industrial enter prise; his life was always favored by a lucky star until finally, due to the war, Germany's collapse, and the persecution by the Prosecution, it took a sad turn. Clean, of distinguished character, highly educated and with cultivated manners, gifted in the field of economics and business, he soon was one of the best-known personalities in international business life.

Together with his highly intellectual and socially accomplished wife, he kept an elegant house in Frankfurt where internally-minded scientists and artists from Germany and foreign countries got together.

In his professional activity within the I.G. Farben he confined himself to the dyestuffs field and here in this field, which always had strong international relations, he was definitely a leading personality. His professional successes, therefore, mainly lay in the field of international relations, and thus as early as the twenties, at a time when Germany was lagging politically far behind the other European countries, he became nevertheless an authoritative personality in international negotiations, with the effect that already in the twenties, as Dr. Keupper has put it, he became the actual creator of the European dye cartels which in the course of the years developed between the I.G. Farben, the French and the Swiss dye-stuffs industry and the ICI, and which also were joined by the Polish dyestuff industry.

Already in 1929, Schnitzler represented Germany under Streseman at the World's Fair in Barcelona. He became a member of the International Chamber of Commerce at Paris, improved from year to year the relations with the foreign industry in Europe, went at regular intervals



to the United States in order to establish and maintain friendly relations with the American dyestuff industry. He was liked and esteemed at home and abroad, and as the witness Dr. Overhoff said in this room: "He was a man of the world and of international education in the true meaning of the word, predestined by his qualifications, his professional knowledge, and conciliatory manner to conduct international negotiations".

No further words are needed to prove that this man cannot have had any inner relationship with National Socialism and that he is a proponent of political peace and peaceful economic relations with foreign countries, especially since the dyestuff business, which he conducted, depended on exports which represented 60 per cent of the sales.

In the winter of 1938-39 Schnitzler, in line with his economic views, took a stand in favor of the German-English trade negotiations and participated in the negotiations at Godesberg in March, 1939. While he was working on the draft for a German-English industrial agreement, the British and German industrialists alike were surprised by the sudden occupation of Prague by Hitler. Shocked by this disappointment, he realized the political danger which could result from this breach of agreement by Hitler, but due to his innate optimism and his personal attitude which only saw the economic necessities he did not believe that war would be the outcome.

As late as August, he held this optimistic view like innumerable people at home and abroad, and unconcerned and carefree he made a trip to Yugoslavia and was not recalled by wire to Frankfurt until the outbreak of the war. The outbreak of war was for him, and all other people who favored a peaceful economic cooperation, an inconceivable and horrible event, and thus he said on 1 September 1939 to his colleague, Dr. Kugler:

"A whole life's work is not crumbling. How can one reconstruct that which is breaking into pieces?"

He sees the cartel agreements which he achieved and the international business of I.G. Farben collapsing, and knows that in the long run a war of this sort will only mean the end of the cultural contact with foreign countries, so necessary to him. Now there comes a period during which a man of his type must perforce suffer, because all enthusiasm for war and all militarism is foreign to his nature. All contact with the old cartel-countries is severed, with the exception of Switzerland, with which he continues to remain in contact. During the course of the war, Schnitzler endeavors, after economic connections with Poland and France have again become possible, to do everything to preserve the I.G. Farbenindustrie and thereby to create the possibility of a common economic foundation for the subsequent period of peace. Seen from this point of view, it is understandable and justified that, in accordance with the former relations, he takes an interest in the Polish dyestuff industry on the basis of the cartel agreements, and via the Swiss dye-stuff industry offers his former French friends a renewed possibility of working together, even during the war, and acquiesced to the same wishes of these French friends.

But all these endeavors were to prove in vain. This had been clear to Schnitzler for some time, but he had not believed that the justified hate of the victors against Hitler and National Socialism would also be directed against every German and especially against German industry. Thus it happened that he was mentally completely unprepared when, soon after the unconditional surrender, in May of 1945, he was arrested and in the penitentiary at Preungesheim had to enter upon a martyrdom for which he was unfit, both physically and mentally. The frightful treatment in the penitentiary and at the same time the endlessly long interrogations which skillfully alternated the methods of duress with those of friendly treatment, led to mental depression, and in accordance with his nature, to

a compliant disposition, so that it is no more to be wondered at that in the endless statements, which amounted to hundreds of pages, he confused truth and falsehood and let himself be guided to false conclusions. Everything he had accomplished, everything he had formerly thought and done was regarded skeptically by the interrogators and twisted to the opposite; the motives of a Hitler were attributed to him, although exactly the opposite is true of him; brutal, violent, energetic, relentless and without culture.

After almost two years imprisonment, he finally came to the "urnberg prison and was then examined by the Prosecution. Here too, the duress was resumed in February, 1947, by threatening him with a trial for perjury if he refuted his former statements, which were submitted to him; he was kept apart from his colleagues in prison; he did not know how to help himself and was only happy when he was treated in a friendly fashion, a thing which always happened whenever he complied with the wishes of the Prosecution in accordance with his old statements, and, as Mr. Sprecher expressed himself, "cooperated." Thus it came about that he actually did cooperate and to this end again filled hundreds of pages with affidavits. And thus I became acquainted with Schnitzler after the indictment had been served, and I had to see that in comparison with the descriptions of his former co-workers, he was only a shadow of his former self. His nature, fundamentally unstable and complaint, had finally achieved the upper hand and injured his ability to judge clearly. Therefore I stress with all frankness, the fact that I soon had to decide not to call Herr von Schnitzler to the witness stand.

I knew that after the 2-3 years of psychological duress, he was no longer capable of making everything clear, and Schnitzler, therefore, felt obliged at least to achieve by his silence the one end in this trial that his friends and



co-workers not be incriminated by his statements and his guilt, even at the risk of harming himself in the trial in this manner. In accordance with his former life, Schnitzler wanted to remain decent and to offer himself as a sacrifice to I.G. Farben and his co-workers at his own risk.

I am absolutely certain that in this way, thanks to the skill of the Prosecution, at a time when they still forebade, me as an attorney to help Schnitzler, I, as a defense counsel, lost many opportunities to clear up the facts of the case. However, I hope that the Tribunal has taken cognizance of this difficult situation and that I have been successful in spite of this, in invalidating the unjust indictment of Schnitzler. I believe that the good facts which have been proved are stronger than the so-called "confessions" elicited by the Prosecution with dubious methods, with duress and arts of persuasion, "confessions" which are basically nothing more than conclusions, argumentation and opinions which the Prosecution put into the mouth of my client, by using him as, - and I use this word intentionally, - a "collaborator".

In contrast to this, I would like, in conclusion of my final plea, to quote two statements of witnesses, which prove that Schnitzler cannot be a man of war, nor a spoliator, nor, as the indictment would have it, a "war criminal".

Dr. Luebbecke, formerly persecuted by National Socialism and rescued by Schnitzler, from arrest by a riot squad, now a Stadtrat in Bad Homburg, states about him:

"International peace was for him, the thoroughly international grand seigneur, the air which he had to have to live".

and Excellence v. Raumer, Reich Minister from the period before Hitler says:

"He as one of those leading industrialists who knew especially well how to form connections abroad. He had, in accordance with the spirit of his company a cosmopolitan out-

look. He was anything but a nationalist. To him it was a matter of course that the progress of mankind and also the progress of Germany could only be achieved by a close cooperation of all peoples, by the exchange of experience and common work on the problems of scientific and technical progress. This attitude, known to everyone, was the reason why Dr. Stresemann, at that time Minister of Foreign Affairs, gave him the position in 1929 of German Commissioner General in Barcelona. He performed this task brilliantly. To what a great extent international cooperation was a matter of conviction for him was shown when he had to plead the case of the granting of Reich credits for this exhibition in the budget committee of the Reichstag, in which I represented the faction of the German People's Party in this matter. Seldom has the Reichstag heard a plea for the necessity of international cooperation given with such inner conviction."

In the Atlantic Charter of 14 August 1941, Roosevelt and Churchill declared that both their countries desire "the full cooperation among all nations in the economic sphere, with the goal of insuring improved working conditions, economic progress and social security for all", and to guarantee all peoples the right "to live in all countries free from want and fear". But for this it is necessary that the "hopes for a better future of the world" proclaimed by both great statesmen also become hopes in occupied Germany. To this goal of economic cooperation of all nations the life and the work of my client was dedicated, and even his actions during the war were motivated by this idea.

Therefore I am firmly convinced that Herr vonSchnitzler was at no time guilty and ask the Tribunal to acquit Dr. Georg von Schnitzler.

DR. MAYER, counsel for the Defendant Gojewski: May it

please the Tribunal:

Military Tribunal IV in the case versus Flick and others, prefaced the first judgment ever passed on industrialists of a conquered country on the ground of violations of the principles of International Law.

These observations which left a deep impression upon us.

Facing this Tribunal are private citizens of a conquered state being tried for alleged international crimes. Their judges are citizens of one of the victor states selected by its War Department. There may well be misgivings as to the fairness of such a trial. These considerations have made the judges of this Tribunal keenly aware of their grave responsibility, and of the danger to the cause of Justice if the conduct of the trial and the conclusions reached should even seem to justify these misgivings.

To err is human, but if error must occur, it is right that the error must not be prejudicial to the defendants. That, we think, is the spirit of the law of civilized nations. It finds expression in the following principles well known to students of Anglo-American Criminal law.

"1. There can be no conviction without proof of personal guilt.

2. Such guilt must be proved beyond a reasonable doubt.

3. The presumption of innocence follows each defendant throughout the trial.

4. The burden of proof is at all times upon the Prosecution.

5. If from credible evidence two reasonable inferences may be drawn, one of guilt and the other of innocence, the latter must be taken."

That an enormous amount of trouble, toil and energy could have been spared, if, throughout this second trial of German industrialists charged with violations of International Law, the Prosecution had always been aware of these fundamental



principles imbued by a deep-rooted sense of responsibility towards the most cherished ideal of mankind: the spirit of justice. The Defense does not hesitate to say that then this trial undoubtedly would have presented itself in a very different light.

We do not deny that the Prosecution was willing so synchronize the presentation of their evidence with the above quoted basic rules of criminal proceedings adopted in all civilized countries in the world. However the Prosecution experienced the same fate as the "Magician's apprentice" of the famous German poet Goethe: they did not succeed in getting rid of the spirits, they had called up, by charging in their Indictment in a summary manner all Defendants with Crimes against Peace, War Crimes and Crimes against Humanity as well as participation in a Common Conspiracy, and by stating verbatim as follows: quote:

"These crimes included planning, preparing, initiating and waging wars of aggression and invasions of other countries, as a result of which incalculable destruction was wrought throughout the world, millions of people were killed and many millions more suffered and are still suffering; deportation to slave labor of members of the civilian population of the invaded countries and the enslavement, mistreatment, terrorization, torture and murder of nationals; plunder and spoliation of public and private property in the invaded countries pursuant to deliberate plans and policies, intended not only to strengthen Germany in launching its invasions and waging its aggressive war and secure the permanent economic domination by Germany of the continent of Europe, but also to expand the private empire of the defendants; and other grave crimes as set forth in this Indictment." End Quote.

It seems a monstrosity to raise a charge of such a gravity concerning the fate of their country against men

who were not members of the Government determining the history, or rather the fate of their country, but who were scientists, technical experts and business men of repute heading a big industrial enterprise respected throughout the world. In their endeavor to bear out their outrageous accusations, the Prosecution has amassed and submitted to the Tribunal an incomprehensible bulk of evidence of every possible kind. However to anticipate one thing, the Defense would say that this mass of evidence in the light of the observations of the IMT judgment and the above said principles of criminal law appears to be in the inverse ratio to its relevancy in this trial under the different counts of the indictment. It is an old truth that to say little mostly means more than to say much and that the most conclusive proof getting to the very core of a matter always is the most concise. Now, obviously, conclusive evidence can be introduced in a criminal trial only on the basis of clearly established facts showing an intentional and wilful violation of rules of Criminal Law. I do not wish to withhold my opinion that this is the deeper reason for the mass of evidence, introduced by the Prosecution, which to a large extent is irrelevant as far as the issues of this trial are concerned.

In an attempt to limit in a substantial degree the confusing mass of evidence presented in this trial the defense filed on the 17th December 1947 a joint motion to the Tribunal, requesting that the evidence offered by the Prosecution under Counts I and V of the Indictment and with reference to the alleged cases of spoliation in Austria and Czechoslovakia, be declared irrelevant for legal reasons and the Defendants be acquitted of said charges.

The Tribunal sustained this motion as to Count 2 but not on Counts 1 and 5 of the Indictment. Therefore the Defense to

comply with its professional duties had no other choice than to deal in detail with the evidence introduced by the Prosecution even in cases where in its opinion on purely legal grounds there would have been no need for refuting it. Thus the evidence in this trial took on gigantic proportions. You, Your Honors, are faced now with the extremely difficult task to sift the chaff from the wheat. In their endeavor to facilitate as much as possible by concentrating on the gist of the matter at issue and by avoiding repetitions, the Defense has entrusted certain counsel with the oral treatment of various general subjects. I to, shall refer to their arguments inasmuch as necessary, whilst for the rest I shall confine myself to arguing the evidence presented under the different counts of the indictment as to the defendant Gajewski, for whose innocence I stand up before this Tribunal with the utmost conviction.

Like all his former colleagues, the defendant Gajewski is charged with having committed a crime against peace and participated in a conspiracy for said purpose. Therefore the Prosecution's theory applies also to him, maintaining that the leading men of Farben had made an alliance with Hitler in full knowledge of his criminal aims and with the clear intent to expand their power as leading personalities of the German chemical industry and to extend their influence without scruples to those countries.



which, according to the alleged common plan had been selected as victims for Hitler's policy of aggression. The underlying historical error to this general thesis of the Prosecution concerning the part which the German industry played within the frame work of the third Reich has been thoroughly dealt with in the closing statement of our spokesman Dr. Dix. If however I furthermore ask myself; whether and to what extent the Prosecution has established a participation of the defendant Gajowski in such alliance out of a ruthless craving for power, then I can but state that I have honestly, but without any success, tried to find one single piece of evidence bearing out this contention. In summing up the results of my endeavours I can only say that nothing remains but the outrageous and unsupported contention advanced in the Opening Statement of the Prosecution with reference to all defendants: Quote.

"There is no loyalty in these men, not to Science  
nor to Germany nor to any discoverable ideal."

I believe that the Defense has submitted to the Tribunal sufficient counter evidence. All those who in the course of the presentation of the Defense evidence testified about Dr. Gajowski describing him as a straightforward and upright man, who, imbued with the spirit both of humanitarian ideals and respect for every kind of scientific achievement, stood up for those ideals not paying attention to any political misgivings as far as this was possible under the terror regime of the Hitler state. In particular, the testimony of his former colleagues who were persecuted under the Nazi regime give ample proof of this attitude on the part of the defendant Gajowski. That all these statements were not construed subsequently and given as a special favor to the Defendant cannot be proved more emphatically than by the report on him to the Gestapo by a prominent Party Official aiming at his removal from Farben and containing a whole list of his sins against the spirit of National Socialism. The Prosecution who obviously did not like this picture drawn of the defendant Gajowski, as not fitting in their

theory, tried to implicate him in the case of the affiant Ohlendorf of having denounced this former Jewish colleague of his, whilst in reality, as shown by the very documents introduced by the Prosecution, it was a request for a house search which to his greatest regret he felt compelled to apply for, on account of information he received from an agency of the Reich government. How else should it be possible that it was just he who undoubtedly contributed in a decisive manner to Ohlendorf's release from prison and who gave him valuable assistance in the course of his emigration, a fact on which Ohlendorf himself lays so much stress in his affidavit. One must have lived through the Nazi reign of ever-increasing terror to understand properly what risk it involved for a member of the Vorstand of Farben to write officially to a former Jewish colleague as late as in June 1939.

"I do not object in any way to your emigrating and shall gladly give you any assistance in furthering your career abroad." The Prosecution hardly knows the what above-described attitude in this particular matter meant had they tried to realize what all this meant at that time for a man in the Defendant's position.

I cannot sum upon this short description of the defendant's character mentally and attitude more emphatically than by referring to the following words of the affiant Professor Dr. Mark, Director of the Institute of Polymer Research in New York: Quote:

"While I had the occasion to work with Dr. Gajowski he always impressed me as being a man of great energy, high intelligence and of impeccable character. He was a hard worker himself, expected hard work from his colleague and associates but was always ready to acknowledge achievement of others and give them the deserved credit. During the pre-Nazi years (1930-1932) he expressed himself repeatedly very strongly against an undemocratic dictatorship of any kind and was a firm advocate of democratic procedures and installations. When the Nazis finally came to power, he did not openly stand up against them which one hardly could have expected him to do as he was a chemist and not a politician. He did however, in his domain, everything possible to reverse the ef-

fect of Nazi doctrines and racial discriminations. In particular he helped a great number of his Jewish or half Jewish colleagues to escape from Germany or he protected them from persecution and dismissal. In this endeavour to assist his friends he went sometimes so far as to risk grave consequences for himself. I had a number of discussions with him on the political situation in Germany and Austria between 1933 and 1938 and remember that he always expressed himself strongly for a return of Germany to a democratic government with free elections and for a complete abolishment of any racial or religious discrimination."

It seems absurd if the Prosecution tries to make us believe that such a man entered into an alliance with Hitler in furthering with knowledge of his intentions his criminal policy of aggression. The Prosecution has not offered any proof that the defendant - due to his personal contacts with Hitler or any of his followers - ever was informed of the true aggressive aims of the National Socialist Government which were kept secret from the public. Neither did he learn of such aims from any of his colleagues. This is not at all surprising, considering the fact that the IMT did not impute such knowledge even to a number of leading personalities of the Third Reich who were in direct personal contact with Hitler. It was therefore up to the Prosecution to prove that either the defendant himself or any of his colleagues with his knowledge was in alliance with Hitler on account of which he had more access to informations about his aims than those high Party - and Governmental Functionaries who were acquitted by the IMT of the charge of a crime against peace and a conspiracy for said purpose. It is obvious that the Prosecution is unable to establish such fact. In order not to be forced to drop its theory of a crime against peace and a conspiracy for said purpose, the Prosecution has erected an artful construction of alleged circumstantial evidence. But this construction lacks the most important essential part, namely the foundation. Proof has been offered on the fact - which as for the rest never was disputed - that IG within the framework of the widely publicized German rearmament had to contribute in certain working fields to this ar-



ament program just as well as numerous other German firms did. Any further contentions, particularly the allegation of the Prosecution, that the defendants from their participation in the German rearmament ought to have derived the knowledge of Hitler's aggressive aims, all this is more speculation. As for the defendant Gajewski he certainly did not draw any such conclusions and the Prosecution has not offered any proof to the contrary. How else could Dr. Gajewski have started in the years 1938/39 on the construction of a big photographic factory at Landsberg, which was not supposed to be completed until 1941. The Prosecution is well aware that Sparte III headed by him particularly lacked any interest under the aspect of war economy as this production concerned photographic products and textile raw-materials and that therefore Dr. Gajewski was not linked up with questions of war economy. It is apparently for this reason that the Prosecution has completely misinterpreted the formal connection of Dynamit-Nobel-Aktien-Gesellschaft with Sparte III and made amazing efforts in order to prove the defendant's knowledge of all details of the activities of this affiliated company in the field of production of military explosives..... It is the position of the Defense that the evidence produced by them in the course of this trial clearly shows that neither the Defendant nor any of his co-defendants had such knowledge. However also this attempt of the Prosecution to establish the guilty mind of the Defendant under Count I and V of the Indictment in this round about manner is doomed to failure; for on the basis of the statements of authoritative experts made in this trial it was especially the production of military explosives and gun-powder which was completely insufficient at the outbreak of war, and it was just at that time that a technical reorganization of the entire production-process in this field was demanded by the Army Ordnance Office which necessarily brought about a production-stop and a subsequent gradual recommencement of such product-

ion. Therefore even in case the Defendant had been informed about all details of the activities of DAG or its subsidiary, Verwert-Chemie, this would not have put him in the position to derive therefrom a knowledge of Hitler's aggressive aims.

Since the Defense still holds that the entire evidence introduced by the Prosecution under Count I of the Indictment is for purely legal reasons irrelevant, I think I can refrain from dealing in a detailed manner with the respective evidence contained in approximately 40 document books of the Prosecution. Summarizing I would only point out the following:

It is not sufficient if the Prosecution in order to bear out their allegation of a crime against peace offer evidence that Farben operated in fields of production - among others - which were of importance for the rearmament program and insofar entailed a certain contact with the various agencies of the German Wehrmacht interested therein. It does not suffice for the Prosecution to establish that Farben played a remarkable part within the framework of the Four Year Plan on account of its position as the leading enterprise in the field of chemical production, being the art of the so-called synthetic process, that is the conversion of abundant and inexpensive materials into valuable raw and working materials.

It is not sufficient to show that also Farben was made part of the MOB Plans of the newly created German Wehrmacht.

In its opening Statement the Defense has most emphatically pointed out to this deficiency regarding the evidence presented by the Prosecution under Count I, and I might even go so far as to maintain that the Defense actually could have stipulated on these points with the Prosecution. Recently there appeared a newspaper report on demanding MOB Plans in the United States of America. It is common knowledge that in the United States

the greatest efforts are being made in advancing the exploitation of atomic energy for military purposes and in connection with similar activities in other production-fields of strategic importance. I can hardly conceive of the Prosecution concluding therefrom that all these activities are intended to serve the preparation of an aggressive war. Neither did the Defendant Gajewski come to such a conclusion at that time.

Armament of itself is not punishable, neither under the London Charter nor under the provisions of Control Council Law No. 10 nor according to the judgment of the IMT. A participation in an armament program can be considered a crime against peace only if it was carried out knowingly as part of the Nazi-plan to wage aggressive war, therefore necessarily with full knowledge of such plan. Not a single piece of the Prosecution's evidence gives rise to any indication whatsoever of such knowledge on the part of the Defendant Gajewski.

I do not propose to go any further into the just mentioned legal problems. I may refer here to the arguments of our colleague Dr. von Metzler who presented once more to the Tribunal the viewpoint of the Defense on those questions. In conclusion I would say that under the abovesaid legal aspects and on the basis of the evidence the Defendant Gajewski is not guilty of a crime against peace.

Under Count II of the Indictment all defendants are charged with having committed war crimes and crimes against humanity in the sense of Art. II of Control Council Law No. 10 and are charged with participation in plundering private and public property and other acts of spoliation in countries which were invaded by Germany. In this respect I may confine myself to referring to the detailed observations made on this subject by some of my colleagues. As far as the Defendant Gajewski is concerned the Prosecution has failed to offer any evidence connecting him with any of



the activities covered by this Count of the Indictment. No case of alleged spoliation has been touched by the Prosecution which is linked up with this special field of work in Farben. In addition Dr. Gajowski was a technician and for this reason alone negotiations with foreign business partners were beyond the scope of his duties. If therefore the Defense has offered evidence on the attitude of Sparte III under the Defendant Gajowski towards competitive firms in the occupied countries, this was done to show the utter unsoundness of the Prosecution's position that all defendants - including the Defendant Gajowski - had approved of the alleged acts of spoliation and plunder. As shown by the evidence the attitude of Sparte III in this respect was absolutely correct. A statement of the managing directors of the biggest competitive firm in the photographic field, the firm of Gevaert in Belgium, confirms this absolutely. The firm Kodak-Patho in Paris remained as friendly as they were before the occupation of France by Germany, as the witness Poindol testified.

I shall now turn to Count III of the Indictment, which the Prosecution chose to style as "Enslavement and Mass murder". All defendants are here alleged to have participated on a gigantic scale in the enslavement and deportation of foreign workers and concentration camp inmates for slave labor purposes. They are alleged to have used prisoners of war for purposes contrary to the rules of the Hague Convention and to have participated in the ill-treatment, the terrorizing, torturing and murdering of millions of enslaved persons.

This charge is - I may say - the most serious and grave accusation which possibly can be advanced against any man. However the alleged facts on which the Prosecution base these horrible charge show that - to put it mildly - they must be qualified at least as heedless and ill-considered. When dealing with the evidence produced in this respect I propose to treat

the different problems separately.

At the outset the Prosecution has tried to prove that all defendants have participated in an elaborate plan of deportation of foreigners to Germany for slave labor. It is the position of the defense that the Prosecution has utterly failed to establish this allegation. They have proved - and this has never been contested - that foreigners and concentration camp inmates were employed as laborers in plants of I.G. However the very detailed presentation of evidence has shown that the so-called slave labor program was initiated and carried out by the competent governmental authorities and the labor distribution agencies coming under them. The Prosecution has not offered any evidence at all that the Defendant Gajewski participated in any manner whatsoever in the initiating or carrying out of such program nor that he even approved of this program. The evidence introduced by the Defense clearly established the very opposite. Besides it would be utter nonsense to assume that the defendant that he was in any way interested in the employment of foreign slave laborers. The Defense has shown that the employment of foreign workers not only entailed heavy expenses, but apart from this considerable difficulties in his plants because the majority of these foreign workers lacked the necessary technical experience, and because the difficulties resulting from the difference of languages had a very unfavorable influence on the cooperation with the German workers and superiors. Accordingly the Prosecution has not offered any specific evidence implicating the defendant Gajewski personally in this respect. They have only alleged that the management of the Camera-works in Munich displayed great activity in securing slave laborers by dispatching representatives to concentration camps for the purpose of selecting inmates who were fit for slave labor in Farben plants. The camera-works indisputably came under the jurisdiction of <sup>3</sup>parte III

headed by Gajewski.

Apparently the Prosecution deemed this to be sufficient reason for implicating Dr. Gajewski in this respect. However the Prosecution failed to offer any proof that the Defendant Gajewski participated in any way in the aforementioned activities of the management of the Camera-works or that he had knowledge or approved of them. That apart from this the real facts have been completely distorted by the Prosecution has been clearly shown by the statement of the manager who headed the Camera-works and his associates.

As far as the employment of foreign laborers and concentration camp inmates as such is concerned, these facts in the opinion of the Defense can never justify a conviction of the Defendants under Count III of the Indictment for the sole reason of the legal provisions and particular circumstances prevailing in Germany during the war. The detailed evidence presented on this point shows clearly that the slave-labor program was not only initiated and set into operation exclusively by the competent governmental authorities, but also that all the details of the execution of said plan came under the jurisdiction of these authorities. The drafting of labor by compulsory measures had already been adopted in Germany before foreign workers -- either on a voluntary or involuntary basis -- were employed in the German industry. Accordingly no enterprise or plant leader was at liberty either to hire or discharge laborers. Contrary to this such laborers upon application were allocated by the labor distribution agencies of the Reich to the different enterprises. Decisive for these allocations was the size and nature of the production concerned as determined in a manner binding upon the individual industrial enterprises by the competent State authorities. The plant leaders were personally responsible for the fulfillment of these production quotas at the



risk of considerable penalties in the case of non-fulfillment.

Undoubtedly therefore any plant leader who - as a matter of principle - refused to employ in his plant forced labor from abroad ran the risk that this attitude would be considered an act of sabotage.

It is therefore the position of the defense that although the IMT adjudged as criminal the slave-labor program nevertheless the employment of forced foreign labor cannot be imputed to the plant leaders as a crime against humanity, to whom such laborers were allocated by the governmental labor distribution agencies for the purpose of filling the production quotas imposed upon them. Military Tribunal No. IV in the case versus Flick and others has thoroughly dealt with this problem and has expressly ruled that undoubtedly it would not be in keeping with the true sense of Art II para 2 of Control Council Law No. 10 to deprive the defendant of the defense of necessity and that the provision of para 4 b) of said Article does not serve such purpose either. In this connection the judgment expressly refers to a passage in Wharton's Criminal Law saying:

Quote:

"Necessity forcing man to do an act justifies him, because no man can be guilty of a crime without the will and intent in his mind." End quote.

It is the position of the Defense that sufficient proof has been offered that such defense of necessity undoubtedly is available to all defendants in view of their obligation to fill the production quotas ordered by the State which again was only possible by employing among others foreign workers and concentration camp inmates allocated for this purpose by the labor distribution agencies. This state of affairs prevailed with every German industrialist and left him no choice than to employ - among others - also forced workers from abroad in order to escape the risk of his personal freedom or even his life. In the above mentioned judgment Military Tribunal IV describes the peculiar position of the German indust-

trialists in a manner which is concise and to this point: Quote:

"The defendants lived within the Reich. The Reich, through its hords of enforcement officials and secret police, was always "present" ready to go into instant action and to mete out savage and immediate punishment against anyone doing anything that could be construed as obstructing or hindering the carrying out of governmental regulations or decrees."  
End quote.

The Prosecution has not established in any way that the situation in which the defendant Gajewski lived at that time differed from the aforementioned facts. On the other hand the Defense has established that the defendant not only was in the same position as every German industrialist, but that in addition he was exposed to a particular danger in view of his repeated frictions with Party and Government agencies.

Once more reference is made to Defense Gajewski Exhibit No. 1, namely the report to the Gestapo which in a particularly striking manner demonstrates those frictions, moreover to the statements of his former collaborators who were persecuted by the Nazis and those of the witnesses Hartmann, Dunst and van Beck on the negative attitude of the defendant in the face of extreme tendencies of the competent governmental agencies displayed in the field of the production of textile raw materials on the ground of furthering as much as possible the German autarcy, last not least to the statement of the witness Schieber, who testified that it was the defendant Gajewski who was engaged in continuous struggles with Party agencies. If the defendant Gajewski, in spite of objecting thereto on principle, acquiesced to the fact that forced foreign labor and concentration camp inmates were employed in the film plant of Wolfen headed by him, this is exclusively due to the situation prevailing in those days and the particular danger to which he personally was exposed. Therefore in the opinion of the Defense he may fully avail himself of the plea of necessity.

The prosecution in presenting their evidence, apart from the just mentioned film plant headed by the defendant, has also dealt with some

other plants coming under his jurisdiction as headed of <sup>3</sup>parte III of IG. The defense would make the following basic remarks on this point: The local plant managers and not the defendant were the plant leaders in the sense adopted by the Law of National Labor. The defendant was responsible for the plants coming under Sparte III, in particular as far as technical questions were concerned. However with regard to questions of the employment of laborers only the local plant managers in their capacity as plant leaders and under the provisions of the just mentioned law were responsible to the labor distribution agencies.

As a matter of actual practice, they were in this field absolutely independent. No other arrangement would have been possible as that plants in question were dispersed all over Germany, and in some instances, were situated at a distance of hundreds of kilometers from Wolfen. Accordingly they came under the jurisdiction of labor-distribution agencies different from those supervising the plant of Wolfen where the defendant had his office. Consequently decisions in matters of the employment of labor quite naturally had to be made on the spot by the local plant managers/ That these men could not refuse to employ forced foreign laborers, concentration camp inmates and prisoners of war allocated to them by the labor distribution offices need not to be explained particularly in view of the aforementioned arguments. This particularly holds true with regard to the employment of female convicts and concentration camp inmates from Ravensbrueck in the Camera-works at Munich which was not to be attributed to any initiative on the part of its manager as alleged by the Prosecution, but who were allocated to the Camera-works as shown by the Defense evidence.



As for the rest I may point out that in the opinion of the defense the defendant having been occupied to the very limit of his working capacity as technical chief of Sparte III of Farben and head of the large enterprise of the Wolfen Film factory with 12,000 employees and workers, could and did discharge his obligation to supervise the plants only by placing at the head of those plants capable men who had lived up to their tasks for many years of service with the firm and whose technical and personal qualifications had earned them his confidence. Thus the defendant could be assured that these plant-managers would behave correctly in matters of the employment of labor as it has been actually the case according to the evidence offered by the defense.

This brings us to another count of the indictment charging Dr. GAJEWSKI as well as the other defendants with having ill-treated foreign laborers and concentration camp inmates and thus having committed crimes against humanity. I may tell Your Honor quite frankly that this charge by the Prosecution has deeply hurt the defendant. The evidence produced by the Prosecution in support of this monstrous charge under Count III of the Indictment and the heading "Enslavement and massmurder" with regard to the defendant GAJEWSKI is so poor that I do not hesitate to call these contentions in view of the attitude displayed by Dr. GAJEWSKI frivolous. The evidence of the Prosecution itself shows that during the last years of the war, owing to a shortage of German labor, something between 4,000 and 5,000 foreign laborers were employed in the film-plant of Wolfen. In addition hereto there were another thousand foreign workers, employed in other plants of Sparte III which were not directed by the defendant himself. Although the Prosecution had ample opportunity to carry out through investigations in those countries from which these workers originated and although the Prosecution had

undoubtedly availed themselves of this opportunity, they were able to present only one single affiant to support their grave charge of ill-treatment of foreign workers by the defendant, namely the affiant van Mol. If the requests published in foreign news-papers or on the radio among all those thousands of foreign workers who were employed in the Wolfen Film-Factory or in other plants of Sparte III, have produced but this one single affiant who testifies on the alleged ill-treatment of foreign workers in the film-factory, then there should be no need after all to treat such an implication in a serious light. However the defendant feels deeply hurt by the charge that in his plant foreign workers were ill-treated, badly housed and fed and unscrupulously exploited, and the defense who share this point of view have introduced ample evidence showing that the allegations of the Prosecution and the affiant van Mol are untrue and that the very opposite is true. As far as the affiant van Mol is concerned, his wage card and sick report prove that his statement regarding working hours at Wolfen and the alleged lack of medical treatment is a deliberate lie. If this witness in his affidavit goes on to speak of ill-treatments, bad housing and extremely poor food, then the abundant proof offered by the defense should suffice to establish that again these allegations of the affiant are untrue, that on the contrary everything was done for the foreign workers as far as this was possible under the ever-deteriorating war-time conditions. I will mention here only a few striking points. If the Prosecution contend that the quarters of foreign workers were entirely inadequate, how then would they explain the fact that from 1940 until the beginning of 1945 in the Wolfen plant alone, 8.2 million Reichsmark were spent on the construction of those quarters according to the informations gathered by the affiant RIESS from the official data of the requests for credits submitted to the TEA. This sum should be increased by 10 to 20 per cent as stated by the affiant

if expenditures entered in the books under production costs is added. The total expenditures of Sparte III for the construction of quarters for foreign workers amounted during the same period of about 12 million Reichsmark. The equipment of these quarters is described in detail by the affiant, the architect ROECK who himself was in charge of the setting-up of these camps. They had heating, 1 electric light, adequate wash-and shower-installations, kitchens and all other additional equipment such as sickrooms, workshops and canteens, and that at a time when hundreds of thousands of German families were living in wretched emergency quarters after having deprived of their homes. As to the food-situation it will suffice to refer to the report submitted by the Wolfen factory to the Military Government at Bitterfeld after the collapse where in the rations distributed among the foreign workers in the camps are compiled on the basis of the files of the Social Welfare Department. The report shows that the average rations exceeded those distributed among the German civilian population at that time. As to the clothing of the foreign workers, the evidence shows that the film-factory did its very best to procure additional clothing for the foreign workers. In connection with the alleged ill-treatment of foreign workers the affiant van Löl has mentioned the names of two former employees of the film-factory. One of them who was doing scientific work in a laboratory for color-films, had no direct contact at all with foreign workers and has stated under oath, that he never ill-treated a foreign worker. The same holds true with regard to the second man, a chemist who headed an artificial silk plant.

The subject of medical treatment is dealt with in the affidavit of the plant physician who to this very day occupies this position and who stresses that as to the physical health and working ability of the foreign workers the same standard was adopted as for the



German workers and that in cases of illness the plant physicians as well as the medical installations of the film-factory were available to foreign workers to the same extent as to Germans.

A striking example of the methods of the methods adopted by the Prosecution is their allegation that the film-factory had submitted to the TEA a request for a credit for the construction of a hut of approximately 4,800 persons. A cursory inspection of this request for this credit would have sufficed to show to the Prosecution that this was not a living-hut but intended to be used for dressing, washing and feeding, and that it was to be used by only one of three shifts at a time.

I think that these brief observations will suffice to show that the statement of the only Prosecution witness testifying on the alleged ill-treatment of foreign workers in the film-factory at Wolfen is false and untrue from the beginning to the end. The priest of the Wolfen community who frequently had private talks with foreign workers of all nationalities testifies that they neither before nor after the collapse they ever complained about the work, treatment, housing or food in the film-factory. He says:

"I have the impression that the Filmfabrik did everything possible. To give an example: As soon as a batch of several hundreds of Polish girls arrived, the film-factory informed the Pastorate and asked to be notified as to the hours of the church services. At first arrangements were made for a special Sunday service. Later on, by order of the Political Police, only one church service could be held every four weeks. But the film-factory did not have anything to do with such measures. The same was also true of other fields. The plant-arrangement of the film-factory, beyond all doubt, did everything in order to ensure that the foreign workers could live as human beings and were treated as such. End quote.

I think that nothing is to be added to these words of the Catholic priest of Wolfen whom even the Prosecution hardly can suspect to judge human dignity under a double aspect.

As to the other plants coming under the jurisdiction of Sparte III, the only example of alleged ill-treatment of non-German laborers which apparently the Prosecution felt able to adduce is the employment of Russian prisoners of war on the building site of the plant of Landsberg. The Prosecution has submitted in this respect a correspondence between the plant-management and the military authorities who were in charge of the camp in which the prisoners of war in question were kept. At the outset it should be pointed out that according to the statement of General Westhof, the former chief of the department of the German High Command under whose jurisdiction such matters came about, the competent agencies of the Wehrmacht alone were responsible for the treatment of prisoners of war, including their medical treatment. Furthermore the evidence introduced by the defense clearly establishes the fact that the poor state of health of these prisoners of war, who for their greater part of the competent Wehrmacht authorities and not to any negligence on the part of the management of the Landsberg plant who on the contrary - as much as this was possible within their sphere of influence restricted by the exclusive competence of the Wehrmacht authorities - had done their best to supply the prisoners of war with additional food. Finally the evidence shows that the defendant GAJEWSKI was contacted on this matter not before the negotiations between the plant-manager and the military authorities with a view of an immediate improvement of the conditions in the prisoner of war camp had come to a complete deadlock and therefore the plant-manager considered Dr. GAJEWSKI's intervention indispensable. Thereupon the defendant immediately took up the matter and saw to it that the Executive Chief of the Agfa in Berlin intervened. However, shortly

thereafter the prisoners of war were withdrawn from the Landsberg plant.

For completeness sake I would remark that the employment of these prisoners of war was in full keeping with the rules of the Hague Convention and that even the Prosecution has not alleged anything to the contrary, neither with regard to the Landsberg case nor to other cases of employment of prisoners of war in the film-factory or in other plants of Sparte III. Besides only very few prisoners of war were employed in these plants.

Before concluding my arguments under count III of the Indictment, I may make one last observation. Not only in the Landsberg case but also in other instances the Prosecution has not been able to establish that the defendant GAJEWSKI personally was involved in any ill-treatment of foreign laborers nor that he knew or approved thereof. For this reason alone I cannot discover any legal aspect under which the Prosecution can legally justify its charge of a crime against peace against the defendant GAJEWSKI. Once more reference is made to the fundamental principle of Anglo-American law as well as of the law of all civilized nations that none can be convicted unless his personal guilt is established. The Prosecution in this respect has only alleged that the defendant GAJEWSKI was "responsible" for all happenings at Wolfen and in the other plants of Sparte III. This can only be understood in the sense that the Prosecution is charging Dr. GAJEWSKI with a punishable omission in violation of his duties. However, a punishable omission first of all presupposes that a wrong has been committed. Even if one accepts the thesis of the Prosecution for a moment, it has not been established at all that the defendant GAJEWSKI wilfully and intentionally neglected to prevent a crime committed by a third party, and that it was his duty as well as in his power to do so. On the contrary the evidence submitted by the defense has shown that due to the prin-



principles of social welfare to which he adhered from the bottom of his heart he never would have tolerated any grievances in this respect, because, to use the words of the affiant Porschmann, he saw in every foreign laborer first and foremost a human being who deserved a humane treatment. Consequently the defendant according to the statement of his associates had stressed time and again this principle and had instructed them accordingly to do their best in order to make life for the foreign workers, far from home, as pleasant as possible.

The same applies to all the other activities outside the scope of the field of work of the defendant covered by the Indictment, especially the employment of concentration camp inmates in the Buna plant of Auschwitz, the so-called medical experiments on concentration camp inmates and the supply of Zyklon-B for their extermination by the "Dogsch". The Prosecution has not established in any way that these alleged activities had been brought to the knowledge of the defendant nor that this was done in such a manner as to cause misgivings on the part of the defendant as to whether or not these activities were objectionable.

Only in such case, however, it would have been his duty to act which, if wilfully and intentionally violated, would involve a punishable omission.

In this connection I may point out that the evidence offered by the Prosecution under Count I, II and V of the Indictment is irrelevant for the same reason.

The Prosecution in Part VI of their preliminary Trial Brief merely stated that the fact that some of the defendants actively participated in some of the crimes covered by the Indictment does not reduce the joint responsibility of the other Farben Vorstand members and that this principle in their opinion is sufficient to establish the criminal responsibility for all activities charged

as crimes in the Indictment.

Once more I should like to stress that this does not suffice in any case and with regard to any count of the Indictment. It was not the defendant's guilt but his destiny which, in times of terror and war-time confusion - now behind us - placed him among those who headed a large German industrial enterprise. Should the Prosecution wish to see him punished for this, then it leaves the tenets of Justice and is motivated only by feelings of revenge and the desire to establish the collective guilt of those Germans who held important positions in the economic life of their country.

After a trial lasting almost a year, it is the grave responsibility of this Honorable Tribunal to examine and to weigh, *sine ira et studio*, the enormous material and the vast quantity of documents. We pray that Your Honors bear in mind, that, after the long years of terror and dictatorship, this unfortunate people is filled with deep craving for Justice and that this Honorable Tribunal can help us to regain our faith in Justice.

In this connection I may refer to the elaborate observations made by Dr. v. LETZLER on this subject on behalf of all the defense today.

Dr. GAJEWSKI is not indicted under Count IV. Therefore I need not deal with this Count of the Indictment.

As to Count V of the Indictment I have already pointed out in the course of my observations under Count I that on the basis of the character and personality of the defendant a charge participation in an alleged conspiracy against the peace raised against him appears just as absurd as the allegation that such a conspiracy existed among the other defendants.

I therefore respectfully submit,

that the defendant GAJEWSKI is not guilty under any Count of the Indictment and should therefore be acquitted. Your Honors.

Every war entails cruelty and, beginning with the earliest conflicts in the history of men up to the world wars of our times waged with all the modern weapons of destruction, atrocities and arbitrary actions have always been its inevitable companions. Shall wonder then that the call for revenge on the defeated enemy is sounded. But this call must not drown out the voice of Justice demanding that only the guilty be punished.

THE PRESIDENT: The Tribunal will rise for its recess.

(A recess was taken.)



THE CHAIRMAN: The Tribunal is again in session.

THE PRESIDENT: The Tribunal recognizes Dr. Nolte.

DR. NOLTE (Defense Counsel for defendant Hoerlein):

Mr. President, Your Honors: Since I have started my activities here at Nurnberg as a Counsel for the Defense, the problem has occupied my mind, who so frequently I have been at a loss to understand the trains of thought and the argumentation of the Prosecution. In all these trials it has been expressed that the officers of the Prosecution and the Counsellors for the Defense are called upon to aid the High Tribunal in finding the truth, so that a just verdict could be rendered.

What is truth?

I take it that the Prosecution is trying just as hard to find the truth as I am. But there must be differences in views, the cause of which lies not only in the method, but is also founded in principle.

Whoever has made up his mind to prove a certain thesis is not a seeker of truth. The endeavor under all circumstances and by all means to obtain the conviction of persons against whom an accusation has been raised, is a poor guide.

It seems to me that only he serves truth and justice who endeavors under all circumstances and by all means to ascertain the correct facts, from which guilt and innocence will result necessarily.

This endeavor is incompatible with the desire to prove correct a decision which has already been made.

This is the position of the Prosecution. The Prosecutor referred to the Control Council Law No. 9, where it is stated in the preamble,

"That I.G. Farbenindustrie knowingly and prominently engaged in building up and maintaining the German war potential."

I assume that it is known to the High Tribunal that this law, which pronounces the confiscation of the I.G., rests on the General Order No. 2 of the American Military Government and that in turn on Directive No. 1067 by General Eisenhower.

The Prosecutor stated there:

"Now, that administratively announced what certainly large portions of the world, the free world, believed to be the facts, We are now engaged in deciding and presenting - from the point of view of the Prosecution presenting to Your Honors, whether or not there was the requisite criminal intent, so that these individuals may be held guilty, and that is not an easy job."

I understand that it is not an easy job to prove what the Prosecution according to its own statements is to prove. In politics the decisions are predicated on a purpose. They must have a purpose.

The decisions of the Courts must not be predicated on a purpose; they must not pursue a purpose, but only serve the idea of law and justice. The reestablishment of the disturbed balance of power and order under law by punishing, those that have violated the peace of law, in order to deter and warn all those who could be tempted to do likewise.

That is not the purpose, but the idea of court proceedings in all civilized lands.

It is considered one of the greatest achievements of the Revolution of 1789, that by the division of authority it freed the judiciary from the overlordship of politics. Through the constitutionally guaranteed independence of the judiciary of the Magna Charta libertatum and therewith the dignity of man became a reality.

Nothing is more apt to undermine the structure of States than a relapse into the prerevolutionary time of despotism, the first goal of which it is to make the judiciary serve the aims of politics and thus to sanction the correctness of their measures, conditioned on political views and world outlook, by the dignity of judicial decisions. We have experienced this.

This whole procedure is under the singular handicap of the Control Council Law No. 9, especially in regard to Counts 1 and 5 of the Indictment.

The problem of criminally responsible participation in planning and preparation of aggressive wars has been decided by the I<sup>4</sup>T as a precedent.

In the opinion it has been expressed with absolute clarity that a condition for the assumption of participation is the knowledge of a concrete aggressive plan and the deliberate support of this concrete plan.

The IIT in its differential appraisal of the individual defendants has provided clues which for the judgment in this trial are simply decisive, for the facts regarding the participation of the individual defendants as well as for the facts regarding conspiracy. Among the fourteen acquitted from Count 1 of the Indictment is also Dr. Schacht. If a man like Schacht, who in August 1934 was appointed Reichsminister for the Economy and in May 1935 Plenipotentiary General for War Economy, in which position he remained until 1937, and from then on stayed as Minister without portfolio until 1943, is acquitted from the charge of participation in the planning and preparation of aggressive war, it appears impossible to convict the men sitting here in the dock, without concrete proof of their actual knowledge of Hitler's plans. This is true particularly of Prof. Hoerlein, whose activities precluded any contact with politically important or oriented personalities.

It is easy to say that Hitler could not have started and carried through this war, if there had been no Farben. This thesis also sounds so "convincing" for someone who is not used or willing to examine the objective and subjective facts before pronouncing judgment. The *actus reus*.

As little as it is "convincing" to make the economic development responsible according to the dialectical, materialistic conception of history, so that the individual criminal responsibility of the individual is precluded, just as little is the mere proof of criminal happenings sufficient, in order to regard as criminally responsible each link of a chain, the absence of which is objectively unthinkable.

The element of guilt cannot be gleaned from the category of causal connection. The guilt, that is for the facts of a crime the intention, consists of the proven desire for the criminal occurrence. Whatever form of participation is alleged (whether it is act, aiding and abetting,



consenting knowledge prior to completion of the act):

the evidence always must include the proof of the criminal intention.

The seemingly so convincing statement that Hitler without Farben, that is without the industrial capacity of the Farben, could not have conducted this war is as true, as it is irrelevant for the judgment under criminal law. It is true for Farben, as also for many other enterprises. By the same token this statement could be made in regard to the industrial enterprises of all countries that participated in the war. It would finally be as valid for the war of defense as for the war of aggression.

This proves that the decisive point of view is not the objective establishment that this war could not have been conducted without the production capacity of Farben, but decisive is the evidence showing the concrete facts or circumstances as well as the time in which this or the other defendants had to come to the clear realization, on the basis of human foresight and in consideration of the individual circumstances, that

Hitler was planning a war of aggression,

that his own work was furthering the realization of this plan and that, conscious of this fact, he was taking a part in measures which could only be regarded as planning and preparation for a war of aggression.

To this effect, I refer to the verdict by the Supreme Court Sales./.

USA, Volume V of the Trial - Brief, which states:

"All articles of commerce may be put to illegal ends. But all do not have inherently the same susceptibility to harmful and illegal use."

"One point of view is to make certain that the seller knows the buyer's intended illegal use, the other is to show that by the sale he intends to further, promote and cooperate in it".

"Furthermore, to establish the intent, the evidence of knowledge must be clear, not equivocal, because charges of conspiracy are not to be made out by piling inference upon inference, thus, fashioning what, in that case, was called a dragnet to draw in all substantive crimes."

The opinion is expressed by the Supreme Court that

"Suspicion, knowledge, acquiescence, carelessness, lack of concern, are not sufficient"

but that

"Informed and interested cooperation" "stimulation" and  
"instigation" must be in evidence in this case."

In order to affirm these prerequisites it cannot be sufficient that certain preparations were made for the event of war. Such preparations are made in all countries. The knowledge thereof and cooperation therein are not identical with the preparations for a war of aggression. Therefore, a concrete proof of facts is required, which do not admit any other conclusion but the fact that a war of aggression is intended. If there is but the slightest doubt, then it must be interpreted in favor of the defendant.

The Prosecution, on the basis of an extensive amount of material covering long years of industrial development, has alleged that, in view of this development, one could only arrive at the conclusion that Hitler wanted a war of aggression.

This is a false conclusion in this case. If Germany's state of armament in 1933 had been normal, if in other words her army and her armament industry had the capacity to put up an effective defense if necessary, then an increase of that capacity perhaps would have been a reason to justify a suspicion. The fact, however, that in 1933 Germany was to be considered defenseless as compared with the military and armament capacities of her neighboring states which could be regarded as possible enemies, and furthermore the efforts by the Stresemann and Brüning governments to achieve a general disarmament in accordance with the Treaty of Versailles, do not leave any doubt in the belief that an increase of armament was to serve the purpose of reaching an equal status, that is a normal state of armament. The outsider could not determine when this state of armament had been reached.

The material submitted by the Prosecution in connection with this count of the indictment, although very voluminous, nevertheless does not contain a concrete clue as to the time when the normal state of effective defense was reached and what concrete circumstances existed which conclusively gave the individual defendant the knowledge that Hitler

intended to conduct a war of aggression for no reason.

Neither is there any need for a more detailed explanation that the preparations for a possible war, which also includes the war of defense, do not differ in any way from the preparations for the war of aggression. Just as little is there any need for a more detailed proof that a substantial part of the industrial development during the period from 1933 to 1939 could have just as well served the peace-time economy as possibly the purpose of war.

It is paradoxical to talk of "collaboration" in a system which coordinates the entire economy and their formerly private organizations, which, in other words, makes them subject to state and political control and institutes the guiding of the economy itself, and to call all regulations, deriving from the aspirations for anarchy on the one hand and the state-socialist tendency on the other, symptoms of a common planning with the aim for war.

In a democratic state with a liberal economic constitution no restrictions are imposed on industrial transactions as a matter of principle. But I am afraid that even in democratic states there is not a complete freedom of action if the government acts in the interest of the country's defense. The Vermittlungsstelle W in itself, the plans for the placing of orders (also called mobilization plans), the precautionary measures for air-raid protection etc. are of no material significance from the legal point of view for a criminal intention; all this also exists in other states.

The evidence has shown that the development of the Elberfeld plant, in the same way as the entire pharmaceutical branch of the I.G. had a normal peace-time production and that its production - since it was not included in the four-year plan was not controlled and much less directed by the armament, economy, either in regard to quantity or quality.

This precludes the first prerequisite for the assumption of Professor Hoerlein's participation in the planning of a war of aggression.

The name Hoerlein and the Elberfeld plant are rarely mentioned in



the Trial Brief and the presentation of evidence of the Prosecution. The reason for that is the fact that Professor Hoorlein did not hold a position in any organization of the commercial economy, a fact which is also important for the question whether and what possibilities existed for Professor Hoorlein to obtain knowledge of the general development in the armament industry.

It was difficult for the Prosecution to include in the sphere of the armament industry and war planning that branch of the I.G. which devotes its activity to the research of new drugs and the development of insecticide. The Prosecution in order to accomplish this in the case of Professor Hoorlein, has taken up the completely accidental fact that a substance, discovered in Elberfeld, was used by the Army Ordnance Office in the later course of development as a war-essential substance, in order to charge Hoorlein of having participated in the secret development of poison gas to be used in the war in close cooperation with the Wehrmacht.

The facts proven by the testimony of the Prosecution witnesses, Professor Gross and Dr. Schrader, as well as the Defense witnesses, Professor Kirth and Dr. v. Sichter, are as follows:

- 1.) The Elberfeld plant never had anything to do with the development or production of poison gas or chemical warfare agents.
- 2.) During the research work in the field of insecticides a highly toxic substance was discovered in the course of the research. This substance had to be reported to the Army Ordnance Office, in compliance with legal regulations.

- 3.) According to the provisions of the law this invention had to be kept top secret until it was released by the Army Ordnance Office.

- 4.) The developing of the discovered substance, which was later on given the names of Tabun and Sarin, was in the hands of the Army Ordnance Office.

- 5.) A "co-operation" between the Elberfeld plant and the Army Ordnance Office did not take place. Elberfeld did not accept a development order offered by the Army Ordnance Office.

- 6.) Prof. Hoorlein was not interested in the "development" of the substance and did not advance it, but even hindered it.

With this the Prosecution's allegation that Prof. Hoerlein participated in the development of poison gas for a war of aggression in close cooperation with the Armed Forces is refuted, and it is really unnecessary to take the primary legal viewpoint into consideration that according to the Geneva Convention concerning chemical warfare neither the research nor the development of poison gas were prohibited.

- - - - -

Under the Count

"Spoliation and Plunder"

the cases are treated which the Prosecution calls "Spoliation Contracts". The contracts are considered to be means of camouflage, intended to give a legal appearance to agreements which allegedly had been brought about by the exertion of pressure. For this allegation it is useful for the Prosecution that these agreements were concluded after the defeat under the occupation regime. It would be wrong to deny that such a state prejudices the personal freedom of the individual. We know from experience how far the limitation of freedom can go. There are occupation powers which completely eliminate the freedom of action in business matters: by investigations, seizure of plants and patents.

Of course, one would not be able to say that the road taken by Farben in France was not influenced by the fact of the military victory. But, in view of the experiences made in the meantime, one will also be obliged to say that the fact of the military victory did not influence the Farben representatives' methods of negotiating with the representatives of the chemical and pharmaceutical industry of France in such a way that it would be permissible to speak of "looting" under the cloak of a contract.

This applies particularly to the negotiations which Prof. Hoerlein conducted with the French business associates: before the signature and during the carrying out of the so-called contract No. 2 between Farben and Rhone-Poulenc. This was the only contract which Prof. Hoerlein signed together with his colleague in the Vorstand, Prof. Mann. This contract

shows already by its form - a simple confirmation by letter - that the agreements concluded thereby were lacking of any anomaly: it was a gentleman's agreement in its origin and remained so during its carrying out. Materially it was a favorable transaction for Rhone-Poulenc.

There was no document and no testimony introduced by the Prosecution in this connection on account of which blame could be attached to Prof. Hoerlein. This absence of any incriminatory affidavit of any of the French business associates concerning Prof. Hoerlein seems to me to be a strong proof for the fact that none of the gentlemen with whom Prof. Hoerlein had negotiated was prepared or in a position to testify anything which might have incriminated him within the meaning of the Indictment.

Dr. Mietzsch deposed in his affidavit, Exh. Hoerlein 46:

"All the negotiations known to me between the firm of Rhone-Poulenc and Farben in this period were carried on by both parties in an unusually friendly manner, such as is seldom achieved by two companies in international collaboration. The basis for this was the agreement No. 2 which was concluded under the decisive influence of Prof. Hoerlein by which both parties to the agreement were accorded exactly the same rights and the same obligations."

Only in this way the especially confidential relations existing between Prof. Hoerlein and Generaldirektor Bo of Rhone-Poulenc can be explained, for which the latter's affidavit (Exh. Hoerlein 49) is a convincing proof. It requires no more detailed explanation that the delivery of the letter which had been written by Dr. Trefouel, and which contained remarks insulting to Hitler, constitutes a proof not only for the mutual confidential relations but also for Prof. Hoerlein's character and attitude. This way of acting, involving danger of life, seems to preclude the assumption that Prof. Hoerlein adopted at any time any other than loyal attitude towards his French business associates.

- - - - -

As to the question of procurement, employment, treatment and feeding of the foreign workers no special charge was filed against the Elberfeld plant which was directed by Prof. Hoerlein and no evidence was submitted.



The only document concerning this Count of the Indictment, namely NI-7413 - an affidavit by Moyeux - is, it is true, contained in Document Book No. 70 of the Prosecution, but it was not submitted.

In order to prove the incorrectness of the general charges made in Paragraph 128 of the Indictment, I submitted 6 affidavits of those persons who had to deal with the feeding, medical attendance, treatment and employment of the foreign workers, in Elberfeld.

These testimonies prove that the foreign workers at the Elberfeld plant were in every respect given a treatment, food and medical attendance worthy of human beings. But they are also a proof for Prof. Hoerlein's attitude in the question of the treatment of the foreign workers in general. If he in his capacity as member of the Vorstand received knowledge of the employment of foreign workers in other plants, his statement must be believed that he could be convinced that they were treated in exactly the same way as he treated those employed with his plant. One can only imagine what one does, or what one would do oneself in a similar situation.

- - - - -

As regards the

D e g e s c h    Count

If one speaks of Z y k l o n - B today, one thinks involuntarily of the gassing of hundreds of thousands at Birkenau. This fact, probably the most horrible occurrence in the history of the concentration camps, was published since 1945 by detailed reports from Nuerenberg and by propaganda all over the world, with the tendency of making it appear as though the hell of Birkenau was known to all Germans.

The Prosecution tries, by using the propaganda theory of a general knowledge of Auschwitz-Birkenau, to construct a special knowledge for the defendants in this trial, namely that Zyklon-B had been the agent for the execution of the extermination program and that this annihilation gas had been delivered via the firm of Tesch and Stabenow through the

Degesch.

The Prosecution's conclusion that Farben's partnership in the Degesch would be equivalent to the knowledge of the delivery of Zyklon-B to Auschwitz for the purpose of the extermination of concentration camp inmates is constructive, and unfounded since it is based on circumstantial evidence which is lacking in conclusiveness and cogent logic.

It is being overlooked that this Zyklon-B is an insecticide which was internationally employed for decades and recognized as excellent, as it is still today, which is indispensable for combatting injurious insects and thereby for the preservation of the health of millions of people. This conception of its application and general possibility was the decisive factor for every one who had to deal with it, had to judge about it or to apply it, and it probably remained so until he received concrete knowledge of its misuse.

1.) As far as the Eberfeld plant is concerned any substantiated assertion of a connection with the Degesch and Zyklon-B is lacking. It is to be considered as proven that the "Degussa" was the "managing partner" and that the management of the Degesch attached great importance to its independence.

2.) The only connection with the Degesch was created by the fact that Prof. Hoerlein became in 1937 a member of the administrative committee, (Verwaltungsausschuss of the Degesch) and from then on received the annual reports and the general reports.

3.) Prof. Hoerlein did not participate in any meeting of the Administrative Committee or of the partners of the Degesch since 1937.

4.) The name of the defendant Prof. Hoerlein is not mentioned in the documents of the Prosecution, neither in any correspondence, nor in a report, record or the like. No reference is made to him in any other documents either.

No facts can be found in the Trial Brief and in the evidence produced by the Prosecution proving a connection of Prof. Hoerlein with, or a knowledge of the internal business transactions of the Degesch.

The business reports of the Degesch and the general informations submitted by the Prosecution contain no indication of the fact that Zyklon-B was delivered to the Auschwitz concentration camp, let alone for the purpose of gassing human beings.

The figures relating to the sales of Zyklon-B constitute according to the result of the evidence produced no proof of a knowledge of the use of Zyklon-B for the purpose of gassing of human beings.

No evidence was produced that Prof. Hoerlein had obtained in another way knowledge of the fact that human beings had been gassed at Auschwitz-Birkenau with Zyklon-B.

The name of Prof. Hoerlein does not appear in the testimonies of the witnesses. Dr. Peters, the manager and the legal and commercial representative of the Degesch, declared in the stand that he does not know Prof. Hoerlein. The testimony of that witness is confirmed by the statement of Dr. Peters which was submitted as an enclosure to the affidavit Minskoff (NI-15071, Exh. 2123). As is said in the affidavit of Minskoff, Subsection 2, Dr. Peters was asked to

"draw up a separate statement concerning the contacts between Degesch and Farben".

In this statement concerning the contacts the name of Hoerlein is not mentioned at all.

During the Prosecution's cross examination of Herr Mann, numerous documents relating to "contacts" between the Degesch and the IG were submitted, likewise during the Prosecution's cross examination of the witness Schlosser.

None of these documents contains the name of, or a reference to, Professor Hoerlein.

Hoerlein's testimony under oath concerning this Degesch complex is, therefore, credible and convincing.

As a logical foundation of a relation, relevant within the meaning of criminal law, to the criminal use of the Zyklon-B gas delivered by the Testa or the Degesch, the Prosecution should have asserted and should



Degesch.

The Prosecution's conclusion that Farben's partnership in the Degesch would be equivalent to the knowledge of the delivery of Zyklon-B to Auschwitz for the purpose of the extermination of concentration camp inmates is constructive, and unfounded since it is based on circumstantial evidence which is lacking in conclusiveness and cogent logic.

It is being overlooked that this Zyklon-B is an insecticide which was internationally employed for decades and recognized as excellent, as it is still today, which is indispensable for combatting injurious insects and thereby for the preservation of the health of millions of people. This conception of its application and general possibility was the decisive factor for every one who had to deal with it, had to judge about it or to apply it, and it probably remained so until he received concrete knowledge of its misuse.

1.) As far as the Haberfeld plant is concerned any substantiated assertion of a connection with the Degesch and Zyklon-B is lacking. It is to be considered as proven that the "Degussa" was the "managing partner" and that the management of the Degesch attached great importance to its independence.

2.) The only connection with the Degesch was created by the fact that Prof. Hoerlein became in 1937 a member of the administrative committee, (Verwaltungsausschuss of the Degesch) and from then on received the annual reports and the general reports.

3.) Prof. Hoerlein did not participate in any meeting of the Administrative Committee or of the partners of the Degesch since 1937.

4.) The name of the defendant Prof. Hoerlein is not mentioned in the documents of the Prosecution, neither in any correspondence, nor in a report, record or the like. No reference is made to him in any other documents either.

No facts can be found in the Trial Brief and in the evidence produced by the Prosecution proving a connection of Prof. Hoerlein with, or a knowledge of the internal business transactions of the Degesch.

have proven:

- a) the knowledge of the fact that the Testa and/or Degasch delivered Zyklon-B to the Auschwitz concentration camp,
- b) the knowledge of the fact that it was intended to use Zyklon-B there for the gassing of human beings, and
- c) the failure in his obligation to prevent further deliveries.

No evidence was produced for any of these three facts as far as Prof. Hoerlman is concerned.

-----

The Prosecution accuses Prof. Hoerlein of participation in criminal medical experiments in concentration camps. It holds him criminally responsible for all criminal medical experiments which were conducted in concentration camps in conjunction with products of the pharmaceutical branch of Farben.

As in all counts of the Indictment, here too there is a lack of concrete accusations which would enable one to perceive any personal guilt on the part of Prof. Hoerlein.

In cases where there is a lack of concrete evidence for any activity, participation or assistance it is a part of the method followed by the Prosecution in the Nuernberg Trials to base its arguments on the judgment of the Supreme Court in the Yamashita case.

Wherever there is a sphere of office or a sphere of business the "Chief" is held criminally responsible for everything which happened in his sphere; by reason of the duty of supervision and inspection incumbent on him. The Prosecution counters the objection of lack of knowledge by pointing out that these things were generally known, in any case ought to have been known to the "Chief", and, if they were not known to him he buried his head in the sand in order not to see anything.

That is the method which the Prosecution has adopted here, too. For this purpose it has made Prof. Hoerlein a "Chief". He was qualified for this because he was not only Director of the Elberfeld I.G. plant but also because he was well known and esteemed throughout the German and international scientific world. When one met him, one met not only Elberfeld, not only Farben, but also one of the best known exponents of German chemo-therapeutical science.

For this reason the Prosecution endeavored to produce proof that Prof. Hoerlein was the top executive, over-all supervisor and inspector in the field of pharmaceuticals (German transcript 174, page 184). The attempt to produce this proof can be regarded as a complete failure.



In the first place it is necessary to clear up the organizational relationship of Prof. Hoerlein (Elberfeld) to Prof. Lautenschlaeger (Hoechst). This was done by the Prosecution's diagram (NI-10029, Exh. 47), the Prosecution witness Dr. Struss, the Prosecution Affidavit by Lautenschlaeger (NI-8004, Exh. 307) and the testimony of ter Meer (German transcript 7240, Page 7181).

Accordingly, it is proved that:

- 1.) There was no top executive in the pharmaceutical branch of the I. G. (German transcript 7240, Page 7181).
- 2.) Prof. Hoerlein was not Prof. Lautenschlaeger's superior (German transcript 1777, Page 1889).
- 3.) The working spheres of Hoechst and Elberfeld were independent (German transcript 1875, page 1887).
- 4.) Prof. Hoerlein was *primus inter pares*. (German transcript 1877, Page 1889).

As already proved by the above-mentioned diagram of the Prosecution (Prosecution Exh. 47, Hoerlein Exh. 56) the Marburg Behring plants (serum and vaccine plants) were not under Prof. Hoerlein. The relation to Marburg and the other Behring plants has been made clear by the affidavit of Zahn (Hoerlein Exh. 51, 111 and 112), by the witness Dr. Demnitz (German transcript 10942, page 10794), as well as by Prof. Hoerlein's testimony under oath (German transcript 6302/03, page 6247/48, German transcript 6437 page 6387).

Accordingly, Prof. Hoerlein had no organizational relationship either to the Hoechst plant or to the Marburg Behring plants nor to any other Behring plants which could be regarded as a top executive position or which gave him the duty of supervision or inspection.

Likewise unsuccessful was the attempt to deduce an authority from Hoerlein's chairmanship at the Main Pharmaceutical Conferences and the Central Scientific Conferences which could be considered as "top executive authority" or "over-all supervision" over the pharmaceutical branch.

From the: -

Basic Information (Vol. 1, page 21) of the Prosecution, from the statements of 8 Vorstand members of the I.G. (German transcript 2140/41, page 2135).

from ter Meer's testimony (German transcript 7240/41, page 7181/82), and

from Dr. Lutter's affidavit (Hoerlein Exh. 56.)

it appears that Prof. Hoerlein, who as the senior Vorstand member of the pharmaceutical branch of the I. G. had the chairmanship in this mixed committee (Mann's testimony, German transcript 10431, page 10296), was neither a superior of the participants in this capacity nor did he have any right of supervision or inspection over them.

The allegation of the Prosecution that Prof. Hoerlein had a top executive position or over-all supervisory powers in the realm of the pharmaceutical branch of the I.G. is thereby refuted, so that from this legal point of view no criminal responsibility exists for matters which concern another plant, and not Elberfeld.

-----  
The presentation of the Prosecution is lacking in concrete statements, it is based on circumstances, circumstantial evidence, presumptions of guilt and false constructions.

It appears as if the Prosecution considers the use of new remedies in concentration camps as criminal. In his opening speech General Taylor speaks of the "great opportunity" which the I. G. recognized and took advantage of by trying out its drugs, which had not gone farther than the laboratory stage, on human experimental subjects, prisoners of war and concentration camp inmates (German transcript 173, page 183).

In order to make these arguments comprehensible we must be familiar with the origin and development of remedies in Elberfeld.

The first state - in the laboratory, in animal experiments, in self-experimentation - is the development of a substance from the obscurity of research to the light of the realization that a substance possesses

the character of a remedy.

The decisive factors in this stage are:

- a) the realization of the effectiveness of a substance;
- b) the determination of its toxic effects,
- c) the certainty - as far as one can be humanly sure - that there is no possibility of any risk to the life and health of the patient.

This stage finds its clearly recognizable conclusion in the so-called expose made by the research laboratory which shows the history of the development of the substance, as well as any secondary effects and rules for administering it, for the benefit of every physician who henceforth uses the substance, and then it becomes a preparation.

This is followed by the stage of which General Taylor speaks and which

is described as clinical testing.

Clinical testing is the stage of the development of a therapeutic substance in which it is determined on the basis of the scientifically prepared expose whether the remedy has a favorable effect on a pathological condition or the course of a disease by treating a number of human beings who are suffering from the disease in question.

The task of the Scientific Department in Leverkusen and thereby its limits of responsibility have been made clear by Professors Demagk, Kikuth and Weese (Hoerlein Exh. 53) and by Dr. Luokker, the head of Scientific Department 1. (Hoerlein Exh. 105, figure 2 and testimony German transcript 6514, page 6459).

According to this, Dr. MERTENS had the task, as chief of the Scientific Department, to see to it on his own responsibility, after receiving the preparations and the attendant reports, that a conscientious clinical test was carried out;

This was accomplished by calling on qualified physicians, clinics and hospitals, which were selected by the Scientific Department, usually



through the so-called Pharmaceutical Offices (Pharma Buero) in the large cities in Germany.

This had been customary for decades. The clinical tests were carried out without medical authorities ever raising any objections; they were done without that there had ever been a case of death in connection with the therapeutical tests (Versuche).

Does the Prosecution really - as it seems - want to establish that it is not permissible to treat sick concentration camp inmates with new medicines? Is it their contention that in an epidemic the same drugs which had been given to German soldiers and civilians should be withheld from sick concentration camp inmates?

Would they not - and rightly so - have described it as a crime against humanity if the IG had forbidden the delivery of the new drugs to concentration camp physicians for the treatment of their patients?

In this obvious dilemma the Prosecution says: it is not the "treating" of concentration camp inmates that is criminal, but the fact that "tests" (Versuche) were carried out with new drugs had been made on concentration camp inmates.

This objection is refuted by the Prosecution itself - which - in the doctor's trial, to be sure - offered the following basic principle for the indictment (German transcript of the doctor's trial pg. 1167):

"The only question we must ask in regard to this exhibit is, whether the 39 experimental subjects contracted this typhoid sickness by natural or artificial means. I as-  
sert that no crime would in fact have been committed had  
these 39 unfortunate persons contracted this disease in  
the Buchenwald concentration camp and then been used as  
experimental subjects, in order to test the effects of  
these drugs, Ruthenol and Akridin."

I declare that the Prosecution would take this viewpoint. Or should the Prosecution take a different stand on such an important

point in this trial than it did in the doctor's trial? The importance of the official position of the Prosecution in the doctor's trial lies in the fact that it makes the rules created for experiments with human beings (German verdict doctor's trial page 22/24) not applicable to the therapeutical trials (Versuchs) within the compass of clinical tests.

Independently of this, the Defense has proved, through the internationally recognized expert Prof. Bubenandt (German transcript 6235, 6238; page 6178, 6179) and Prof. Heilmayer (Hoerlein exh. 73):

1. That the rules regulating experiments set up by Military Tribunal No. 1 do not pertain to therapeutical tests (Versuche); in so far as they do not proclaim a general code of ethics for doctors.
2. The therapeutical test (Versuche) is not an experiment but an attempt which, translated freely into English, means "therapeutical test".
3. Since until this day there is no specific, i.e. effective drug against the typhus germ, it would be a neglect of duty as defined by the doctor's code of ethics to withhold a drug that appeared effective by reason of scientific research, from a typhus patient.
4. Accordingly it follows that the use of new drugs within the compass of clinical tests in themselves, is permissible, wherever it may be.

Therefore it can only be inadmissible and punishable:

- 1) when a doctor makes therapeutical experiments with new drugs after previous infection;
- 2) when a responsible person incited these illegal experiments (Versuche) or knew that a doctor was making such illegal experiments (Versuche)
- 3) or when such a person gains knowledge of such incidents and nevertheless sends new drugs to this place.

These things must be proved by the Prosecution. Has it brought concrete proof for one of these offenses?

In the Hoerlein case we must, according to the presentation of the

prosecution, investigate the tests made with the Elberfelder remedies B 1034 and methylene blue. There is little to say about the drug B 1034. It is not mentioned either in the Trial Brief of the Prosecution or in the documents presented by the prosecution in connection with inadmissible experiments, and in particular not in the affidavits of the inmate doctors Dr. Tondes (exh. 1715), Dr. Kladzinski (exh. 1717) and Dr. Feikiel (exh. 1716, 1743).

The Defense has offered evidence to show that the assumption was justified that B 1034 could have a good effect in combatting typhus. (Hoerlein exh. 107, file notice of the Scientific Department Leverkusen, dated 14 December 1943, re the verbal report of Dr. Vetter on Periston, B 1034 and Rutenol.)

In the cross examination of Prof. Kikuth the Prosecution attempted to prove that the witness, and thereby Elberfeld, knew of the deficiency in the effect of B 1034 on typhus. (German transcript 12618, page 12467). The witness, who had discovered this preparation for fighting trachoma (eye disease) admitted that he had been sceptical in regard to its effectiveness with typhus. But he declared that the successes, about which he had personally convinced himself through Prof. Seifert, Leipzig, (German transcript 12619, page 12467) and about which other, important doctors made reports, had caused him to become convinced that B 1034 could have favorable effects on typhus, after all. The Prosecution presented the Prof. Kikuth exhibit No. 1696 (German record 12646/47, page 12492/93). But this document is just the one that shows that the Russian woman doctor T reported favorable effects of the preparation.

Therefore, there is no proof that inadmissible experiments had been made with the Elberfelder preparation B 1034, or that the results of the treatment required a breaking off of the clinical tests. It must always be kept in mind that there is no specific remedy for typhus and that in an epidemic even the slightest success can save



hundreds of people's lives.

-----  
The facts of the case of

METHYLENE BLUE

require a closer investigation, because they connect the name of Dr. Ding with the Buchenwald concentration camp. Without giving recognition to the value as evidence of the entries in the Ding diary, the Prosecution can assert with apparent justification that the entries from 10 January - 20 February 1943 (exh. 1608) make it seem believable that Dr. Ding had made a therapeutical experiment (Versuche) with methylene blue.

On the basis of this entry, the Prosecution made the following assertion:

"Prof. Hoerlein urged Dr. Mrugowsky, the highest-ranking hygienist of the Waffen-SS, to undertake inadmissible experiments with methylene blue."

The Prosecution failed to furnish any conclusive concrete proof for this assertion.

Prof. Hoerlein and Prof. Kikuth denied any connection with, and any knowledge of these experiments at Buchenwald. Prof Kikuth stated under oath that he had spoken to Dr. Mrugowsky about his discovery, just as with many other scientists, mentioning that methylene blue had a specific effect upon the typhus germ, so that there was a possibility of a successful therapy. (Hoerlein, Exh. 62).

He was closely examined during his cross-examination about the question of the alleged "suggestion" and the alleged "urging" to undertake experiments with methylene blue (German transcript 12641/42.) He stated under oath:

"Nobody from Elberfeld made this suggestion." "I only spoke with Mrugowsky about typhus and Mrugowsky told me that there was a great number of typhus cases, and thereupon I told Mrugowsky that I had found

a drug which was likely to be effective in typhus cases. Thereupon Mrugowsky asked me whether he could get that drug, and I told him that the drug was methylene blue, which was available everywhere, but I was prepared to place a greater quantity at his disposal for his patients if he wanted it."

"I did not know Dr. Ding and heard of him only after the war. Not knowing him, I could not possibly know that he was a collaborator of Dr. Mrugowsky".

"During the war I did not see any report of Dr. Ding concerning results of the experiments with acridin, rutenol and methylene blue in typhus cases. Such a report has never come to my knowledge."

"In this connection the testimony of Prof. Kikuth (German transcript 12643, page 12489) may be quoted, in which he states that inmates of concentration camps cannot possibly be suitable experimental persons, because the physical and mental conditions are far from normal, the purpose of a clinical test namely, to reach results of a general applicability, could, therefore, not be obtained.

This deliberation of the scientist alone makes the idea that he or Prof. Hoerlein might have spoken to Mrugowsky about experiments in a concentration camp appear quite absurd.

But the possibility of such experiments being undertaken after previous infection is beyond any imagination; for, as the evidence has shown, therapeutical experiments after artificial infection are, from the scientific point of view, absolutely meaningless, as every infection caused by administration of a specific dosis of a drug results in a considerably more severe disease than is the case with a natural infection, (Kikuth, German, transcript 12644, page 12489/12490) so that it cannot possibly lead to scientific results of general validity.

This fact is, in our opinion, the strongest logical proof, because it cannot be assumed that responsible I.G. men would have done, or tolerated anything so preposterous and at the same time contrary to their

own interests.

The sworn statement of Prof. Hoerlein is, therefore, credible in as far as he says that he did, on the occasion of the one, isolated conversation with Mrugowsky, not mention methylene blue experiments. (German transcript 6355, page 6280, German transcript 6330/39, page 6281/82.)

That this statement is correct, is furthermore confirmed by the fact that there was never any exchange of letters between Hoerlein and Mrugowsky (German transcript 6337, page 6281/6282) and that a report about methylene blue experiments by Dr. Mrugowsky never reached Elberfeld (German transcript 6338, page 6383).

The attempt undertaken by the Prosecution to bring the trustworthiness of Dr. Hoerlein into discredit by submitting the Neumann report Exh. 1866 and referring to page 6 of that document, has failed. By decision of this Tribunal this page of Exh. 1866 and all questions referring to this record were deleted.

The conclusion is, that as far as the Elberfeld products B 1034 and methylene blue are concerned, there is no evidence of any facts incriminating Prof. Hoerlein from the point of view of criminal law.

-----

The Prosecution tried to infer a particular knowledge of inadmissible experiments undertaken by Dr. Vetter in the concentration camp from the contact between Dr. Vetter and the Scientific Department Leverkusen.

Primarily, the question must be asked, whether or not it has been proved that Dr. Vetter did make criminal experiments.

By no means has it been proved that Dr. Vetter conducted such experiments with drugs from Elberfeld. The verbal report of Dr. Vetter to the Scientific Department concerning treatment with B 1034 (Exh 107) allows of no inference to inadmissible experiments, but only to a successful treatment. What is more, the Prosecution, upon whom the



onus of proof rests, has furnished no evidence for the assumption that this file notice has come to Prof. Hoerlein's knowledge.

The Prosecution is trying to prove its assertion that Dr. Vetter made criminal medical experiments at Auschwitz, by referring to the affidavits of the inmate physicians Dr. Tondos (Exh. 1615), Dr. Kledzinski (Exh. 1717) and Dr. Feikiel (Exh. 1617, 1743). Analyzing these depositions in detail, I have proved in my Closing Brief (parts E VI) that they furnish no evidence for the assumption that Dr. Vetter made criminal experiments with the drugs rutenol and acridin 3582, but that they prove that he has rather treated patients with these preparations.

The Prosecution on which rests the burden of proof, has called neither Dr. Vetter, nor the persons treated by him, as witnesses. It may hardly be supposed, nor has the Prosecution alleged so, that all the persons treated by Dr. Vetter have died. In the doctors trial, the Prosecution called a considerable number of the wretched people who had been experimented upon, as witnesses. Would this not have been possible here too? The physicians Dr. Tondos, Dr. Kłodzinsky and Dr. Feikiel did not name a single one of those who were treated with the preparations rutenol and acridin 3582.

The Prosecution left it in the dark, whether any persons were killed by the use of such drugs, or whether they died in spite of the treatment with such drugs. It rather chose an ostensibly objective explanation of the facts, which left open two possibilities, the causative one and the non-causative one. The suggestion influence of the concentration camps and of the medical barracks, of those dreadful happenings - without any consideration to any factual connection - and of the retrospective contemplation, was intended to act in the sense of an emotional causal nexus. These tactics are rather clever because they are meant for people who do not know the things from their own knowledge and experience, but are rather receiving their information through a purposeful, one-sided retrospective representation of the facts.

Since Prof. Hoerlein was never in a concentration camp, and there was neither a direct nor an indirect connection between the Elberfeld works and any concentration camp, and as Prof. Hoerlein had no official contacts either with Dr. Ding, or with Dr. Vetter, the Prosecution had to resort to circumstantial evidence and to guesses.

Prof. Hoerlein was in a position to receive information from two sources:

- a.) from the therapeutical conferences,
- b.) from the reports of the Leverkusen Scientific Department.

ad a.): If it were true that the I.G. had its new products systematically tested in concentration camps, tests (Versuche) in concentration camps would certainly have been discussed during the pharmaceutical main conferences, the scientific central conferences or the conferences of the outside-representatives. The Defense has submitted affidavits of all the persons participating in these conferences, as far as they were accessible, in order to make this point clear. 26 persons who had attended those conferences, stated under oath that in the course of those conferences neither the testing of drugs in the concentration camps was mentioned, nor the inadmissible experiments with IG drugs. (Doc. Hoerlein 118, 121-124, 126-134; Exh. Hoerlein 138-141, 143, 146, 151-155, 118-142.).

ad b.): The Prosecution had submitted letters and file notes about oral reports of Dr. Vetter to his former colleagues in the Scientific Department of Leverkusen. Of these, no report and no letter is addressed to Elberfeld. The Prosecution, for its part, has offered no proof that reports of the Scientific Department of Leverkusen went to Professor Hoerlein. Neither has it introduced Dr. Mertens, the Head of the Scientific Department, nor the heads of the Departments WI I and II, Dr. Luecker and Dr. Koenig, as witnesses, nor offered affidavits made by them. Here, too, the Defense, for the sake of clearing up matters, has introduced Dr. Luecker as a witness, and submitted affidavits of Dr. Luecker, Dr. Koenig, Prof. Domagk, Prof. Kikuth, and

Prof. Weese, and questioned Prof. Hoerlein on the stand about it.

As a result the following could be ascertained:

- 1.) It has not been proven that the letters and reports of Dr. Vetter addressed to the Scientific Department have been shown to Prof. Hoerlein.
- 2.) From none of these documents can it be seen that Dr. Vetter made illegal tests with pharmaceuticals of the IG, precluding that, even if these letters and reports had become known to Prof. Hoerlein, the latter could have obtained knowledge of inadmissible tests.
- 3.) The German word "Versuche" within the scope of clinical tests means the treatment of sick persons with new remedies (in the English language "test"), and precludes a supposition of inadmissible experiments.

Thereby the thesis of the Prosecution is refuted, and it is proven that Prof. Hoerlein did not obtain any knowledge of inadmissible tests with pharmaceuticals of the I.G. either through the pharmaceutical conferences, or through reports of the Scientific Department of Leverkusen.

- - - - -

I am firmly convinced that the High Tribunal will recognize that the Prosecution, particularly in the Hoerlein Case, from clearly recognizable reasons of procedural tactics, has depicted general and peripheral events in dark outline, without rendering them subjectively and objectively concrete, without showing the necessary causal connection and the guilt of the individual defendant. The Prosecution went along devious paths, which were swallowed up in the jungle. You will not follow them; for you do not want to get lost.

If the Prosecution believes it has submitted evidence which - as it says - does not permit any reasonable doubt, it is in error. As far as Prof. Hoerlein is concerned, there does not exist any concrete conclusive proof, not on any count.



Wherever knowledge by a defendant may be a necessary element of a crime, the decision in a great measure is influenced by the judgment of the personality of the defendant, his credibility, and his overall attitude to the true values of life.

Apart from the personal impression of the defendant Hoerlein on the witness stand, the following characteristics — gleaned from the evidence — will be of significance, his human integrity, his scientific reputation, the sense of responsibility shown in this field, and his business practices over a period of many years. The proof offered in this regard requires no comment. It speaks for itself and leaves no room for doubt that this man is incapable of any immoral action. This man is no blank page. (kein unbeschriebenes Blatt). You were able to see from documents that Professor Hoerlein was not afraid to speak his mind in Nazi Germany, which was in contrast to the official doctrine, that he fought for the freedom of science, that he — in opposition to anti-Semitic trends — openly interfered in behalf of Jews and helped them. This man is a fighter for truth, justice, and liberty. His picture is clear. But to me nothing seems humanly more significant than the fact that he, as the head of the Elberfeld works and as a research scientist, refused to link his name publicly with any invention which was made under his leadership, with his help and by his collaboration.

It is difficult for the Defense Counsel to make a choice from all of the affidavits and statements of witnesses submitted about Hoerlein's personality. For the defendant it is distressing at his age to be obliged to prove that as a man and a scientist he led a life above reproach.

Professor Hoerlein is a man carved of hard wood, thanks to whose immense working capacity the Elberfeld works and its research laboratories rose to world fame and international importance.

After a war like the last one, which caused and still causes an immensity of sacrifices and suffering, it is a shocking tragedy to accuse a man whose every thought and endeavor was to ease the suffering of mankind and to diminish the number of victims. The number of soldiers is legion who owe their lives and their health to the sulpha drugs, and in the Pacific war to Atabrine. The American public, which in the time of peace hailed the saving of Roosevelt's son, and rewarded Elberfeld and Farben with public recognition, apparently has forgotten that without Elberfeld, and that means without Hoerlein, thousands of parents would mourn for their sons, and thousands of wives for their husbands.

The forgetfulness went so far that originally even Atabrine was made a Count of the Indictment. It was an American who said:

"Without Atabrine and without the atom bomb America could not have won the war in the Pacific so quickly."

That was the contribution of the Farben plant at Elberfeld, and thereby Hoerlein's, to World War No. II. And, I think Farben may be proud of the fact that, of the two causes, it contributed that one which also in times of peace brings mankind only healing and blessing.

I cannot and am not going to portray to you the almost 40 years of activity of Professor Hoerlein in the service of suffering mankind. You will recognize his importance if you realize the significance of any of the many eulogies offered in this court, or written down in the documents submitted.

Dr. Boehringer (Hoerlein Exhibit No. 117) expressed it with these words:

"I see in Professor Hoerlein one of the greatest benefactors of mankind, who in history belongs in the same line with Pasteur and Koch. To Professor Hoerlein surely hundreds of thousands of people owe their lives. I cannot keep myself

from being convinced that the day will come when his distinguished services will be appreciated."

Unforgettable are the words of Professor Butenandt (Hoerlein Exhibit 20):

"I esteem and admire in Professor Hoerlein the leader — who was not only a man of genius, but also one conscious of his responsibility — of that Elberfeld research institute, to which the whole world will eternally be indebted for the development of beneficent and invaluable drugs for the good of suffering humanity."

Can you believe that such a person would ever tolerate it that tests with Pharmaceuticals from his plant would be conducted under circumstances and by methods which would have to be designated as doubtful from an ethical or scientific point of view?

In full consciousness of my responsibility as defense counsel, who endeavors to be a servant of the law and a helper to the Court, I ask the High Tribunal, in accordance with the unequivocal result of the evidence taken,

to acquit

the defendant, Professor HOERLEIN.

THE PRESIDENT: The next argument on the schedule will be that of Dr. Pelckmann on behalf of the defendant von Knieriem. The Tribunal has concluded that it would hardly be fair to ask Dr. Pelckmann to start his argument and then to recess in the course of six or seven minutes. Under those circumstances, the Tribunal will rise until nine o'clock tomorrow morning.

(The Tribunal adjourned until 0900 hours, 4 June 1948.)



Official Transcript of Military Tribunal No. VI,  
in the Matter of the United States of America,  
against Carl Krauch et al, Defendants, sitting  
at Nurnberg, Germany on 4 June 1948, Justice  
Shake presiding.

THE MARSHAL: Persons in the Courtroom will please find their  
seats.

The Honorable, the Judges of Military Tribunal VI.

Military Tribunal VI is now in session. God save the United States  
of America and this Honorable Tribunal:

There will be order in the Court.

THE PRESIDENT: Mr. Marshal, you may report.

THE MARSHAL: May it please your Honor, all of the defendants are  
present in the Courtroom.

DR. FEICKMANN, for Dr. von Knieriem: Mr. President, Your Honors:

At the close of this trial I am faced with the task on the one  
hand to give a detailed account in the closing brief, on the other to  
summarize in the final plea those points which should receive your  
primary consideration when forming your decision. In this task I am  
above all faced with the one important question: What is more important  
a discussion of the great legal and economic problems which are again and  
again raised in these Nuernberg trials, turning them into milestones  
on humanity's road from war to peace or to consider the Defendant as  
an individual and soberly to appraise what part he had in the alleged  
crimes charged by the Prosecution? It cannot be denied that particularly  
here at Nuernberg in all the trials and especially in the final pleas  
two schools of thought have been manifesting themselves. The German  
jurists obviously have a tendency to theorize and to rationalize; they  
are inclined to view all problems in an abstract manner from under a  
large-scale perspective. In American Jurists on the contrary we ob-  
serve the tendency to form a concept only on the basis of practical  
experience and results.

However, the German manner of interpretation and argumentation is  
not always purely theoretical, but is necessary in view of the general

background against which the Prosecution is outlining the mainstays of its charges. "Hitler's alliance with Industry", the "Weakening of Germany's potential enemies through cartels and patents" or "common knowledge" i.e. the knowledge of the German people, and thus also of these defendants - of Hitler's plans of aggression - these are only a few of such general themes introduced by the Prosecution in this trial. They open up the most involved historical, sociological and economical problems. Here the Defense has to dispense the fog of slogans and prejudices which formed during the war and postwar period in your country, Your Honors, and which the Prosecution employs as its great - however invisible - principal witness and accomplice. Such "half knowledge" is the enemy not only of science but also of justice.

The discussion of these general subjects is, however, also necessary, because the Prosecution uses them not only as the background, but often as its only argument - construed by force - in order to establish a connection between the defendants' actions where criminal implications cannot be found to exist on the basis of normal concepts of criminal proceedings. Just in such instances, a defendant's defense could in the normal run of things consist of one single sentence - however, by far-fetched arguments the Prosecution forces the Defense to deal in detail with the most involved problems of the recent past.

I, at any rate, shall not add anything unnecessary to the essential discussion of such general problems, for these discussions are valid for all defendants, therefore also for my client. I shall have to deal at greater length with one group of problems only: The cartels, their national and international implications particularly with regard to future wars. According to the Prosecution documents, Dr. v. Knieriem is presumed to be incriminated under that count of the indictment. That is not the case, in my opinion. However, that count of the indictment at least deals with Dr. von Knieriem's real and actual relations on the basis of his position in Farben, his specialized knowledge and the duties he actually performed, thus enabling the Defense Counsel to make

a concrete reply to them. That, however, presupposes a knowledge of the general problems of the cartel system, which I shall briefly outline below.

Besides that, I shall not forget that we are here engaged in criminal proceedings. And in criminal proceedings only persons and their actions, not, however, economic theories, systems or organizations can be - or at least should be - on trial: Such persons can be convicted for their actions only if they are guilty. "Criminal guilt, however, is personal guilt" - thus the DMG judgment confirms an age old principle of justice. The core of the guilt-problem, is therefore constituted by the defendant's personality, i.e. his position, his actual relations to his surroundings, his authority, his skills and knowledge and - last but not least, his general moral quality.

The judgment of Military Tribunal IV in the case v. Flick et al. confirms this - I quote - "Necessity of appraising the conduct of defendants with relation to the circumstances and conditions of their environment. Guilt, or the extent thereof, may not be determined theoretically or abstractly." (Engl. prot. page 11004, dated 22 Dec. 47).

Dr. von Knieriem, like the majority of the Defendants, was a member of the Vorstand of Farben the charge of the Prosecution is that he rendered himself guilty within the meaning of criminal law by his activity or lack of activity in that capacity. My colleague Herr von Holtzer has already dealt on principle with that theory of the Prosecution in his final plea and closing brief. He based himself in doing so on the written opinions of the Experts Dr. Walter Schmidt, the commentator on corporation law, and of Mezger, Professor of Criminal Law, and the detailed exposition of the working methods employed in the Vorstand in Defense Exhibit No. 170, v. Knieriem Doc. 34, vol v. You, your Honors, are enabled to draw the conclusions arising from it for each individual defendant, only if you know his actual position in the Vorstand and in the organizational set-up of Farben.



Dr. von Knieriem is a lawyer. Unfortunately, lawyers all over the world have acquired the reputation of knowing and being able to do everything. I remember a colleague who was not afflicted by any inferiority complex concerning himself nor his profession who asserted the following: "The lawyer is the well-educated layman in all spheres of knowledge." He was a bad lawyer. I am, however, able to state, and this is borne out by his international reputation - that Dr. von Knieriem has been and continues to be a good lawyer. Therefore, he knew the limitations of his skill in his activity for Farben.

That could not have been any different in view of Farben's type of organization. Corresponding to the independence of the various manufacturing - and marketing units, the legal branch was decentralized as well. Each plant, each sales unit had its legal department. They worked independently and on their own responsibility. Consequently, far from every legal matter in Farben came before Dr. von Knieriem, and even if it did come to his knowledge, e.g. by being mentioned in the Vorstand, that did not mean that he had to examine it from the legal point of view, as long as it did not come within his specific sphere of work. Neither did he have to keep the various legal departments under constant supervision. Their chiefs were subordinates to the heads of the various plants. The legal administration was centralized only by means of two institutions: the legal committee and the central office for contracts.

The legal committee was composed of the chief lawyers of the various Farben manufacturing and sales units; Dr. von Knieriem was its president. The legal committee had no office, no secretary, no letterhead, and neither wrote nor received any correspondence. These men met only informally and at irregular intervals, only 16 times in the course of 13 years. Through this committee a certain amount of personal contact was maintained between the lawyers, who were of course scattered throughout Germany. It afforded the possibility of occasionally exchanging ideas on problems of general interest and of discussing unified

courses to be followed regarding those. In this way the specialized knowledge of individual gentlemen was of benefit to the others. It was by no means the purpose of the legal committee to supervise the activities of the individual legal departments, to decide on concrete problems, to approve contracts or to pass any binding resolutions whatsoever.

The central office for contracts had the purpose to avoid clashes in the course of the conclusion of agreements. Agreements of Farben were not handled and concluded centrally by one agency but independently by the various agencies of Farben. Such an agreement was, however, binding for all of Farben. The central office therefore examined the agreements for any inherent possibilities of clashes with other agreements and registered them. Dr. von Knieriem was not concerned with the routine of this scrutiny for clashes. That was unnecessary, for most cases offered no problems, and it would also have been a practical impossibility in view of the enormous number of approximately 2000 contracts. The few contracts, however, which he handled outside of his specific sphere of duties, he only examined with a view to clashes, for the rest of the content had already been dealt with by the individual legal departments, who were responsible for it.

The above method according to which the legal system of Farben was organized in view of the enormous size and variety of business branches of Farben, was the only possible way. A different more severely centralized method or organization would have put a simply unbearable burden of responsibility upon the leading lawyers, who would have been faced with an immense and largely unfamiliar sphere of work. The sphere of duty and responsibility of the "first lawyer", which Dr. von Knieriem was in this position, since 1938, solely owing to the importance and exclusive nature of his specific sphere of knowledge, his membership in the Vorstand, and his presidency of the legal committee, was also limited in the Vorstand.

By no means all legal matters which came before the Vorstand, but only a small part thereof, were Dr. von Knieriem's concern. Also in the Vorstand, his large sphere of work was clearly defined and limited, comprising: 1) matters of corporation law, such as charters, preparatory work for annual meetings, changes of capital, loans, annual balance sheets, fundamental tax problems; 2) the structure of the concern from the legal and tax points of view. 3) patent problems, and 4) the handling of special questions, such as e.g. the contract relations with Standard Oil. As far as other legal spheres were concerned, the other members of the Vorstand could call upon the lawyers of the respective legal departments for legal advice and assistance. Agreements were by no means submitted in the Vorstand by Knieriem, but by the respective Vorstand member concerned, except in cases when the matter just came within Knieriem's own sphere of work. In this connection we recall e.g. that the agreement with Rhone Poulenc was introduced by the defendant Mann.

Thus it is natural that not every legal problem which came up in the Vorstand was examined by von Knieriem. That was simply not his task.

Dr. von Knieriem frequently attended the meetings of the Technical Committee and the Commercial Committee,



but, as a guest, and only out of interest for certain legal questions touching upon his own sphere of work.

This survey of von KNIEREM's activities and position in Farben, which is indispensable for the correct evaluation of the question of guilt, i.e. the question of personal guilt, follows clearly from the evidence, i.e. KNIEREM's own statements, the testimony, affidavits, and documents submitted by the Prosecution as well as by the Defense. It absolutely conforms to the statement which KNIEREM made in numerous interrogations long before the commencement of this trial. The Prosecution attempted neither during cross examination nor during rebuttal to shake this evidence. In order to further establish the absolute reliability of these statements, it is hardly necessary to point to my defendant's moral integrity and to the fact that in the case of his statements regarding the individual counts of the indictment Dr. von KNIEREM has never contradicted any of his repeated and extensive earlier interrogations, the records of which the Prosecution for that very reason did not by far submit in full. Also from the witness stand, he not once corrected any of his earlier affidavits or statements made at interrogations. Even less has he been charged with having made any untrue statements.

The moral integrity of the Defendant von KNIEREM's character will be decisive to a high degree for the evaluation of all his statements regarding the counts of the indictment. The impression gained is made even more complete through the discussion of the counts of the indictment concerned with the "weakening of Germany's potential enemies by means of international cartels, in particular the mass of agreements between Farben and Standard Oil."

The analysis of the evidence of just these charges of the Prosecution furnishes particularly rich and valuable proof of the degree of truth in von KNIEREM's defense, because we are here dealing with a mass of facts which Dr. von KNIEREM actually worked on very intensively at

the time, at least as far as their legal aspects are concerned. Therefore, he is in a position exhaustively to argue and refute with facts each variation in the indictment, a chance which the Prosecution did not offer him often, as most of its charges suffer from a pathological lack of any material relevancy to the Defendant.

Let me, however, attempt first to create the atmosphere prerequisite for a dispassionate review of the conduct of Farben, as well as of my Defendant, in the matter of cartels.

The belief in a program, in a dogma, is the curse of our time. The intolerance attaching to some concepts shows that in some spheres humanity has not progressed much in the course of many centuries. The experience of the years from 1933 to 1945 should have demonstrated to the worshippers of dogmas and systems to what possible extremes such a fundamental attitude may lead. Two sources of danger are always inherent in such an attitude: 1) the adherent of the one dogma or ideology does not know and does not want to know the facts and processes of thought upon which the other side is based, 2) one no longer sees the human being on the opposite side, his intentions, his mental outlook, but sees in him only the representative of a class, a party or a political, economic, or some other kind of dogma. The assumption of participation having taken place in some form as expressed in Paragraphs c) and f) of Article II, Part 2 of Control Council Law No. 10, for example, is the product of such a mental attitude addicted to dogmas.

Dr. von KNIERIEN dealt extensively with cartel questions in Farben and, with the advice of American cartel experts, created the important framework of agreements - referred to as cartels - with Standard Oil on an international basis. It will not surprise any one familiar with the public animosity against cartels, which has been created in the United States through legislation, that any man who collaborated in an alleged cartel agreement over there at once gets

the reputation of an evil-doer. You, Your Honors, come from that country. I, however, want to remove that general suspicion by pointing out the different development of the cartel idea in Europe and Germany, on the one hand, and in United States on the other.

The European economic and legal life is based on the principle of freedom to conclude agreements, i.e. every manufacturer or merchant is free and unfettered to conclude agreements with other businessmen concerning all possible problems and fields, including the basis of their mutual competition. Such agreements concerning prices, markets, circles of consumers, allocation of production, exploitation of patents, etc. were continuously being elaborated throughout the whole of Europe, to be sure. The development started approximately in the latter third of the 19th century, and in 1933 there were approximately 10,000 cartels in Europe. Britain had approximately 2500 of these, Germany 2000, Poland approximately 250, Czechoslovakia approximately 800, Hungary approximately 260, Sweden approximately 200, Switzerland had a few hundred, etc. In Germany the State, namely the republican government, in 1919 set up mandatory cartels, e.g. for coal.

The strongest reason in favor of that development was Germany's poverty in raw materials and foodstuffs, which made itself particularly felt in consequence of the enormous burdens imposed by the treaty of Versailles. Thus in some spheres Germany was not able to afford a completely free economy. We are encountering the same difficulties today after the Second World War.

The existence of cartels was recognized as legal by German courts in the past and in this country. While striving to utilize the advantages of German inventions in order to obtain the foreign exchange urgently needed by Germany, German industry started many years prior to the Nazi regime to conclude international agreements which in some of their features displayed a resemblance to cartels.

In the United States of North America the development occurred



in exactly the opposite way. There, the principle of the freedom of competition was demanded. It found its visible expression in the "SHEPHERD Anti-Trust Act" of 1890, in which the United States prohibited the formation of cartels. That Act became the economic magna Carta of the American people, the symbol of economic freedom.

That strict principle was, however, relaxed in the course of time by means of various special laws: in 1914 by the Clayton Act, in 1918 by the Webb-Pomeroy Act, in 1922, 1933, and 1938 by further special laws regarding agriculture, sugar, oil, and coal, and during the last war by special regulations when the interests of national defense demanded a speeding up of technical development.

In America a gradual change in the strict anti-cartel attitude is clearly to be discerned.

In the World Trade Charter under discussion, with the United States participating in a leading role, in the suggestions made in the version of February 1947 for the control of cartels an approachment is taking shape between the formerly mutually exclusive principles of the freedom of concluding agreements and the freedom of competition. These proposals are supposed to leave unaffected the treatment of national cartels within the individual countries. The international agreement regarding cartels leaves a leeway for individual nations to come to mutual arrangements on an autonomous basis, above all regarding export cartels.

This development is important with respect to the following: The realization is expressed in the new international proposals that in order to achieve international co-operation one must be prepared to recognize the necessity of coming to an agreement even with those holding different opinions. This realization demands a switch-over in the treatment of the cartel problem from aggressive tactics based on anti-trust laws in individual instances to the wide framework of an international trade policy. In the clash of two worlds, the free

and the controlled economy, we are witnessing the birth of one world. After hard pangs, a synthesis must be achieved one day in the national as well as in the international sphere.

Walter RATHENAU, the great German economist and statesman, expressed this after 1918 in the following way: "Without the occurrence of a world catastrophe, the economic equilibrium would have been able to survive for another few centuries in spite of all the waste, the hostility and destruction; now, however, the rising forces are being matured by dire need; what could not be enforced through moral distress is being accomplished through economic want. The need to economize with power and raw materials works the change from a fluctuating equilibrium to a planned and organized one, and while man believes himself to be taking care of his material needs, he is obliged to work towards justice "and further." "Out of these ruins, there will neither burst forth a regime of social Communism nor a new regime based on the free interplay of forces".

The very personality and achievements of Walter RATHENAU are a living proof how little an affirmative or negative answer to the cartel question depends on political conviction, in particular National Socialist conviction. RATHENAU, the great democrat and republican-- in German political terminology--this does not constitute a contradiction - who represented pacifist Germany and at the international conferences was in favor of the policy of fulfilling obligations; who as a Jew organized - "cartelized" as it would be called in American German raw material control during and after the First World War, fell victim to the bullets of assassins, forerunners of the Nazis. Anything tending to preserve his memory was blotted out by the Nazis after 1933, but today in the new Germany there is hardly a

city to be found without square or a street named in his honor. Your honors, I believe I have shown in this manner that the question of whether national or international cartels are useful, harmful, or even criminal does not depend on economic or political dogmas, but that the reply to it is subject to perpetual change. The classical pronouncement of the International Military Tribunal is also applicable here in a figurative sense: "This law is not rigid, but through continuous adjustment it assimilates itself to the needs of a changing world". I believe that if you realize that you will be free of prejudices and will understand the full truth of Mr. von KRIEGER's answer when I asked him here as a witness "Were the foreign cartel agreements of Farben based upon a definite cartel policy, and was that discussed in the Vorstand?" and when he answered "No, certainly not. One has to realize once and for all how such a cartel agreement is concluded. First technical or sales experts of either Farben or the other corporation either at home or abroad, suggest that a reasonable private agreement be concluded regarding a certain point. A meeting is then arranged and negotiations ensue in order to arrive at a solution. That takes sometimes weeks, sometimes months, and then the lawyers step in, when everything is completed, and phrase the agreement, in a reasonable manner corresponding to a clear-cut situation. Afterwards, under close examination, it will sometimes turn out to be a cartel agreement, even according to German concepts. Another time it will be a cartel according to American but not to German concepts, and sometimes it will perhaps not be a cartel even according to American concepts, although these cases appear to be rare".

The text of the agreements between Farben and Standard oil and the history of their development in no way support the theory upheld by the Prosecution, that they were made in order to diminish the potential of Germany's enemies, in particular the United States of North America. Nothing in this framework of agreements points in that direction. Most glaring is probably the fact that these agreements were made long before the beginning of the Nazi era, i.e. in 1927, 1929, and 1930 respectively, while the Prosecution simply maintains that Farben was already acting in



conjunction with the Nazi government at the time of their conclusion. The fulfillment of the agreements, in particular of the exchanges of experience agreed upon there, was of course not the concern of the lawyers but of the technical experts in the relevant branches. This could not have been different, in view of the manner in which experiences are exchanged. However, on the basis of a series of observations Dr. von KNIERIEM had gained a general impression concerning the performance of agreements with Standard Oil and the exchange of experience in particular, and stated this in the witness stand. According to that impression, the experiences were exchanged without reservation and in full fairness by both parties. The mutual exchange of experiences was only somewhat hampered on both sides by the treason laws, which to some degree stood in the way of the disclosure of military secrets, that is, anything that might be of importance for national defense. Both partners were therefore sometimes permitted to exchange experiences only with the consent of their respective governments. This applied, however, to both sides, and complete clarity existed on this point between both partners. Because of its special interest, I shall deal briefly with the Buna affair. The Jasco agreement is before the Tribunal and may be judged by the Tribunal itself. At approximately six places in this agreement it is stressed that one or the other point shall be settled at a later date. In spite of that, Dr. von KNIERIEM accepted in his direct examination the viewpoint of the Prosecution, according to which the Jasco agreement was to be considered a binding agreement. That viewpoint appeared correct to him, although it might have been more promising and more advantageous with regard to the trial to take a different view. Apart from its empty claims, the Prosecution was not able to produce any proof that at the time of the conclusion of the Jasco agreement, Farben intended to weaken American industry and pursued anything but reasonable and fair motives of private enterprise. Concerning the execution of the Jasco agreement, in particular the exchange of experience, the principle again holds true first of all: Only

a technical expert, and only one familiar with the relevant special subject at that, can carry out or direct an exchange of experience, never a lawyer. During his direct examination Dr. von KNIERIEM stated the date at which the know-how of Buna from petroleum had to be divulged to Standard Oil, namely the autumn of 1939. Before that time, it was not possible to talk of a complete production method, suitable to be licensed and utilized by third parties. After the outbreak of the European war, however, in view of the High Treason Acts, Farben was not in a position to disclose that know-how to Standard Oil, as it would have been passed on to Britain and France. The transfer of the patents was still carried out by Farben with the consent of the German government. Since the time at which the Buna know-how could and had to be given was only reached in the autumn of 1939, it may appear strange that part of the Buna know-how had undoubtedly been divulged before that time. This is easily explained by the circumstances, as Dr. von KNIERIEM stated in detail.

The most important key to the understanding of the entire development lies, however, in the following: Farben's Buna process at certain times during the years preceding 1939 did not appear very profitable or tempting under American conditions. This fact paralyzed the interest of Standard Oil, who was therefore not at all eager to obtain the information on Buna drop by drop. We must not fall into the typical error of judging these events from our present angle: Who in the middle of the thirties would have anticipated a war against Japan, the conquest of Singapore, the Malayan Peninsula, and the Dutch East Indies, and the blocking of rubber supplies to the United States?

All told, the effect of these agreements was not to impose a tragic restriction on the development of strategic industries in the United States, as is alleged by the Prosecution, but on the contrary an extraordinary enrichment, increase, and acceleration of American production facilities, in particular in many strategically important branches. The office draft of a reply of Farben to Kaslan's speech which had shown

how enormously the US war potential had been enriched by Farben agreements by no means goes to prove the opposite. It was of course somewhat biased in view of the purpose of the statements, namely for use in a possible High Treason Trial before the National Socialist People's Court, with which the leading men of Farben were threatened in 1944.

It is inherent in an exchange of experience that both parties should gain by it, and the draft reply of Farben of course lays more stress on the one aspect, HASEMAN's speech more on the other. Both aspects supplement each other and only together give the total picture which corresponds to actual facts.

What tragic resignation is shown by Dr. von KNIERIM's final words on this subject in the interrogation here: "That seems to be the inevitable consequence of all international cooperation in the technical sphere. What technical achievements one country gives to another during peace time, are in war time turned against the giving country, and in that event reproaches are raised, probably always against both partners. Each one is reproached by his country. It was similar in the case of Standard Oil".

What a special tragedy, that after Germany's defeat the industrialists of the conquered country should be on trial before the victorious nation for just the opposite reproach!

The Prosecution did not dare to make the slightest attempt to shake von KNIERIM's statement regarding these counts of the indictment. The statement is corroborated by numerous affidavits from Germany and abroad, by witnesses and documents from that time. It also conforms to the detailed statement he gave in writing to the Chief of the Decartelization Branch of the United States Military Government Control Office for Farben as early as 1945/46. Your Honors, you may see it with your own eyes if you care to look up Exhibit KNIERIM 12, in Doc. Book III. In addition to yourselves scrutinizing KNIERIM's statements, there is, however, even another means at your disposal, to convince yourself of their absolute reliability, namely the testimony of that Chief of the



Decartolization Branch, which he on his own accord sent to Dr. von KIERIEM in July 1946 and in a more elaborate form in August 1947, upon learning of the charges against him. These are the exhibits von KIERIEM No. 13 and 14 in Doc. Book III. Mr Louis LUSKY of Louisville, Kentucky, wrote the following: "During those several months I reached the conclusion 7 which I have not previously communicated to you, or, for that matter, to anyone else - that you are a man of the highest probity. I examined with great care your several reports to me and subjected you to searching cross-examination in order to ascertain the existence of misstatements or concealments therein. I also cross-checked those reports, as far as I could, with other sources of information available to me. In no case did I discover any substantial inaccuracy or omission".

Of even greater importance and significance, not only for Dr. von KIERIEM but the fundamental viewing of all cartel problems, is the following utterance of that eminent authority on trust legislation in the United States: "During that period I also had occasion to discuss with you your views on questions of government policy, particularly in the fields of cartel and patent law, and found that although we were frequently in disagreement, your position was based not on a belief in the totalitarian principles of the Nazi Government but on an enlightened legal philosophy fully consistent with the best traditions of the Anglo-American Bar". That is the full confirmation of the concept I developed in the foregoing, to the effect that an unbiased examination of these problems is bound to lead one to respect the views of the other party and therefore leads to a synthesis to the advantage of all nations. I rejoice, Your Honors, that in your great country there are such men, who do not identify themselves with accusations distorted by passion, who do not succumb to the mass psychosis of propaganda, who instead soberly contemplate only the facts and the man, and do not shrink to own up to it. In view of all that, I am of the opinion that there can be no more explicit or precise rebuttal of the Prosecution's charge concerning the weakening of Germany's potential enemies by Farben.

and von Knieriem's participation therein, for one thing, because in addition to the other evidence, all statements made by the defendant in the witness stand here have been proven absolutely true.

Yet I cannot and must not pass in silence over one circumstance, which may unaccountably affect you when arriving at your verdict: Namely the general directive No. 2 of United States Military Government, dated 5 July 1945, for the implementation of Law No. 52, Its preamble is worded in the following way: "Whereas, through its world-wide cartel system and practices I.G. Farbenindustries AG, as a deliberate part of Germany's bid for world conquest, hampered the growth of industry and commerce of other nations and weakened their power to defend themselves..... it is hereby ordered: ..."

Do not these words already anticipate all that should only be decided by your verdict, Your Honors?

The Tribunal is not bound by these words. This wording does not create a "res judicata" and is legally irrelevant.

Military Tribunal No. IV in the case of the United States vs Flick et al, in a much more difficult question maintained the judgment to be completely independent of any ordinance of the administration. Article 10 of M.G. Ordinance No. 7 rules that the Tribunal is bound by the IMT judgment. Conscientiously, and mindful of its duty to examine laws for their legal validity, the Tribunal arrived at the finding that an ordinance of the administration was unable to create legal validity where such could not exist according to the recognized principles of justice. Military Tribunal No. IV therefore stated: "We shall indulge no implications therefrom to the prejudice of the defendants against whom judgment would not be res judicata except for this article.

(Engl. Transcript page 10978, dated 22 Dec. 1947.)

The arguments for that viewpoint are convincing. The opinions expressed in a judgment can have legal force only with regard to a person who was involved or could have been involved in the trial preceding the judgment. Article 10 of the Charter of 8 August 1945, upon which the International Military Tribunal was based and which, according to Article 2, forms an integral part of the London agreement, therefore rules the exception:

"If an individual is on trial before a court of the occupation authorities because of his membership in a criminal organization, the criminal character of that organization is held to be proven on the basis of the IMT Judgment and must not be contested."

This ruling is exclusive, and therefore means the following: The finding of the IMT cannot be binding for other persons, who were not involved in the IMT Trial. The sphere of persons concerned could be widened only through a new decision of the four occupation powers, therefore possibly by the Control Council. That, however, has not been done. Control Council Law No. 10 does not ordain legal force with respect to any other persons than those in its article II. A simple ordinance of the United States Military Government can therefore never be competent to enlarge or alter the London Agreement and the Charter of the International Military Tribunal.

That must in particular hold true if - as was maintained by the Prosecution and a number of Military Tribunals at Nuernberg - the courts here are international tribunals or are carrying out international orders. In that case, their rights and duties, which are derived from the London agreement and the statutes for the IMT, cannot be changed unilaterally by the U.S. Military Government.

Article 10 of Ordinance No. 7 is therefore invalid.

This Tribunal can with far greater justification free itself from the wording of Administrative Directive No. 2, which merely presents an



opinion which is not proven. Directive No. 2 - unlike Article No. 10 of Ordinance No. 7 is not even addressed to the Military Tribunals here. The opinion of Military Government which finds its expression in it is not unchangeable and shall not remain unchanged. It is still based on the well-known Directive JCS 1067 of the Joint Chiefs of Staff to the United States Commander in Europe, which was directly influenced by Secretary of the Treasury Henri Morgenthau. Today, the Morgenthau plan has been recognized as a great and even tragic historical error.

Five months after that American directive, Control Council Law No. 9 was passed, concerning the seizure and control of the property of Farben. In it there is no mere mention of the cartel system; it is stated merely that Farben "consciously and to an extraordinary degree worked toward the increase and support of the German war potential." With this wording, the question of conscious participation of Farben in a war of aggression is left open. Actually the IMT arrived only one year later at the finding that a war of aggression had been waged. Neither does the Control Council Law mention "plans for world domination, impeding of trade and industry of other nations, and weakening of their power to defend themselves." That law was promulgated by the four great victorious powers. The Economic Division of the American Control Council Group played an important part in framing it.

Your Honors, by means of a detailed criticism and analysis of the results of the evidence in reply to the Prosecution charge of "the weakening of Germany's potential enemies by means of cartels, in particular, Standard Oil and Jasco", I have proven the absolute reliability and trustworthiness of every utterance by Dr. von Kriesheim also regarding other counts of the indictment, far beyond the limits of the assumption of innocence and truth, which is a valid principle in Anglo-American proceedings and which all Nuernberg Military Tribunals have confirmed in

their judgments.

The rebuttal of paragraphs 69, 71 and 73 of the indictment, "Camouflage and Concealment," and the elucidation of Dr. von Knieriem's work in the sphere of patents in connection with the so-called "New Order", obtained through Dr. von Knieriem's testimony in the witness stand and through other evidence, for details of which I refer to the closing brief, is therefore likewise not to be contested.

At the beginning of my plea, I presented Dr. von Knieriem's position in Farben, and the legal sphere. In this connection too, we may put complete trust in what the defendant himself explained as a witness in his own case, supported by other evidence. From his position it follows in particular that he was not concerned with certain charges of the Prosecution and is able to say very little about them. This applies in particular to all the technical questions concerning pure rearmament matters, such as explosives, poison gas, nickel. They have been dealt with at length in my closing brief, and the same applies to counts II and III of the Indictment ("Plunder and Spoliation" and "Slave Labor"). Due to Dr. von Knieriem's training, his position, and his sphere of duties, and in view of Farben's decentralized organization, he could have touched only the outer fringe of happenings in the technical sphere, could have known little about them, and therefore by force of circumstances could say little in his defense in this respect.

In order to give an important supplement to the general picture which my colleague von Metzler unrolled in such an excellent manner on the subjective aspects of the charge of aggressive warfare, I should like to refresh your memory on behalf of the Defendant von Knieriem. During his interrogation here, Herr von Knieriem replied to the following thesis of the Prosecution: "It is sufficient to believe that the purpose - namely exe-

cution of a national policy of expansion - can be reached by threat of military force, although if necessary these means of compulsion would actually have been applied." He replied the following: "I never had such an idea. Had I thought about it, I would probably have had the opposite idea, namely that an unprotected country runs the danger of being exposed to such pressure on the part of others. It affects all these questions - and that was really what I meant before - that people in Germany still vividly recalled the sanctions that had been imposed against Italy."

Please do recall further, how Herr von Knieriem described his experiences at Ludwigschafen following the First World War. His viewpoint is understandable and has to be believed, for his trustworthiness in general is beyond doubt for the reasons already stated; with reference to Count 1 of the Indictment, too, it has not been shaken by any specific utterance on the part of the Prosecution.

Dr. von Knieriem was not obsessed by the Nazi ideology a fact which in other cases the Prosecution likes to use in order to strengthen its thesis of the Defendant's guilt. His only link with the Party consisted in plain membership. He joined the Party at a very late stage. And it is again the chief of the American examining authority for the sphere of cartels, Mr. Lusk, who, after with Dr. Knieriem for many months, has the following to say on this subject in his unsolicited statement dated 26 August 1947, Exhibit 14 in Vol. III: "As I recall, you were a member of the Nazi Party; but it is my personal opinion, based on my careful observation of you during the above-mentioned association, that you did not subscribe to its doctrines."

How far removed Herr von Knieriem actually was from all problems of rearmament is proved by the fact that he was not even adorned with the official designation of "Wehrwirtschaftsfuehrer" (Military Economic Lea-



der), although certainly an important and a respected member of the Vorstand of Farben. It is further characteristic of his remoteness from technical and commercial problems, that the Prosecution does not list him among the functionaries of the Reich Group for Industry, which they assert "was given governmental authority regarding the German mobilization for war."

To Count II, Plunder and Spoliation, it was established through the evidence on both sides that Dr. von Knieriem was not concerned with it in a concrete case or as a matter of principle, neither in an active nor a participating nor even advisory capacity. This is natural in consequence of the fact that these matters were outside his sphere of duties as a lawyer. Therefore von Knieriem was justified in considering it as not belonging to his tasks to examine such contracts for acquisitions when they were submitted in the Vorstand. To carry out such examinations would merely have nullified the system of decentralization and would have exceeded the working capacity of any human being.

The Prosecution neither asserted nor proved that Knieriem was present at such discussions either in the TSA (Technical Committee) or in the KA (Commercial Committee). The Defense on the other hand brought proof that von Knieriem as a rule attended these committees only because of certain special problems from his own sphere of duties, and was present only while they were being discussed.

The Prosecution also neither made the assertion nor produced proof that one might have gained the impression of wrong or suspicious matters from those oral reports, as far as they took place at all - even if, which is contested, the relevant actions involved any wrong-doing. We recall again that, e.g., the previously mentioned oral report on the agreement with Rhone Poulenc which was delivered in the Vorstand by the defendant

Mann took up only a comparatively short time, while Herr Mann's elaborations here in the witness stand, in which he analysed the agreement from all angles, took up several hours. It is obvious that in view of the organization and division of labor in Farben, such an elaborate oral report could never have been delivered in the Vorstand.

As a witness in his own behalf, Dr. von Knieriem explained how remote he was from these matters, de facto and de jure. Also, the Prosecution did not produce anything in this connection that might have served to shake von Knieriem's absolute credibility.

which the Court repeatedly had the opportunity to verify.

The fact that Dr. von Knieriem was also not active in the sphere of employment of foreign workers, prisoners of war, and concentration camp inmates, was not expected to handle questions of that type, had no knowledge and, owing to the internal organization of the I. G., did not have to have any knowledge of the exact circumstances concerning their procurement and their work, all this follows from the explanations he gave here in the witness stand concerning his position. As far as his sphere of work is concerned, by which also his work in the Vorstand was defined, it did not include problems of labor and labor legislation. Neither the legal committee nor the legal departments of the local plants were concerned on principle with problems of labor allocation. That was the concern of the welfare and personnel of departments.

Knieriem's great attendances at sessions of the TEA, which were restricted to his specific sphere of duty, do not prove that through them he might have obtained more detailed knowledge on problems of labor allocation.

May I once more point out that also with reference to this count the defendant's statements in the witness stand deserve full credence, and were not disproved nor even contested by the Prosecution.

Dr. von Knieriem had no reason to withhold or misrepresent any objective or subjective facts. Neither his conduct nor his knowledge at the time permit one to draw the conclusion that he had any cause, reason, or justified suspicion, to procure documents regarding these labor questions for enquiries of his own and to be dissatisfied with what he had heard from his colleagues during the meetings. The legal grounds for this opinion have been submitted to you by my colleague von Metzler in his final plea and incorporated in writing in our closing brief concerning the responsibility of the members of the Vorstand.

Neither under German nor under Anglo-American law can a decision



be arrived at as to the criminal guilt of this defendant. "Criminal guilt, however, is personal guilt." To contest this fundamental principle of Western jurisdiction remained the privilege of the Minister of Propaganda of the Third Reich, namely Dr. Goebbels. There were two great political trials in the Third Reich, during which the Nazis employed that wizard of words as a witness in order to influence the decision. We German defense counsels still recall his testimony in the Reichstag fire trial and in the trial against engineers and employers charged with the responsibility for the death of the workmen killed when a tunnel of the Berlin underground collapsed while under construction. The trial was staged with political intent. It was intended to show to the masses of German workers, who had been defrauded of their rights, how concerned the government allegedly was for their welfare. This underlying idea appeared quite clear in Goebbels' testimony of 11 June 1936, which I read when stating my reasons for requesting a review of the proceedings. Goebbels said the following: "I personally issued instructions to the State Police for the immediate arrest of those gentlemen who are in the dock at present". "The interests of the state demand that an example be set which takes the actual conditions into account." "In the face of this catastrophe I have the irresistible impression that this is not merely a case of the clashing of natural forces....." and finally he demanded their punishment even without guilt.

In practice, his opinion -- which was expressed for purely propagandistic reasons -- led to the same results as the Prosecution's, for the Prosecution is unable to prove -- even if, contrary to our firm conviction, crimes were committed somewhere and at some time -- that Dr. von Knieriem was in a position to know about them. Dr. Goebbels' voice has been silenced, but the fight for justice goes on.

It is my innermost conviction that the Tribunal will listen to the voice of justice.

THE PRESIDENT: The Tribunal will listen to Dr. Berndt on behalf of the defendant ter Meer.

DR. BERNDT (for Dr. Fritz ter Meer):

Your Honor, Your Honors!

We Germans are justly accused of not having shown sufficient civilian courage during the Hitler regime. I would never permit my two clients to be in a position to reproach me for not having represented their interests in this trial with the necessary frankness. This frankness, however, finds its limit in the respect which I owe this Tribunal. Not in the outward respect which is shown by the fact that I stand here below you, but in the inner esteem which I have for you, out of my inner conviction and voluntarily, and which is the result of your activity which I have been able to observe and to acknowledge during many a month.

First, the defendants are accused with having planned and conducted a war of aggression. What was the Second World War fought for? In the January issue of the "Sueddeutsche Juristische Zeitung", Ministerial Councillor Arndt, of the Hessian Ministry of Justice, writes:

"A sober considering of the position must show the Janus head of this war, which was not fought for Right alone, but to the same extent for Might. This fight for power takes place for gold or labor currency, for sources of oil, for I. G. Farben, the Ruhr coal, and the British Dominions."

If that is the case, are these men the logical defendants?

If that is the case, is, after the war is lost, Farben not the actual defendant in this trial, Farben, whose entire property was confiscated by Control Council Law No. 9, twenty days before the promulgation of Control Council Law No. 10, on which the indictment of this trial is based?

Did Farben, which according to the article quoted was one of the

objects of this war, have an interest in this war, in a war of aggression? Is it not correct that Farben had, as a consequence of the first World War, lost so much, which it had regained in part by considerable efforts, that it would have been madness in these defendants to start a war? A war, the extension of which was recognized in particular by those men who were gifted with supra-national foresight? Did these defendants really plan a war, all of them men of ripe age with great experience in each technical branch, men who knew that a new war would not be decided by spirit and personal courage, but by technical appliances only? Should especially ter Meer have been so daring, he, who knew of the attitude of the USA towards Hitler from his own observations, just as he knew of the immeasurable resources of America, he who, after the outbreak of the war, had stated on the occasion of a meeting of the Army Armament Office: "Gentlemen, even if you should succeed in actually carrying out the delivery program demanded by the Army, please try to keep in mind that it will need no effort on the side of the USA to produce ten times the quantity of all materials mentioned here and to make this economic superiority count when the day comes!"

The Prosecution accuses Farben, that, by developing an industry whose aim it was to produce synthetic products, it prepared Germany for a war of aggression. In this connection, however, it has a wrong idea of the historical development which was the cause of the coming into existence of this industry. As a result of the First World War, Germany lost her foreign credits and a considerable part of her foreign markets. Thus, Germany was able to procure the raw materials required for the reconstruction of her industry only with the aid of foreign credits. This was why Germany during the twenties came to be greatly involved in debt. When, in the course of the crisis in world economy, she was deprived of these credits, Germany's payment balance became passive, and she was no longer able to purchase on the world market a



sufficient quantity of the raw materials which she absolutely required for her industry. Nor was it possible to remedy this difficult position in the field of foreign currency by an increase of exports, because nearly all countries closed their borders to the import of foreign goods.

Therefore, Germany had only the choice, either to lower her standard of living, or to try, through the synthesis of indigenous raw materials, to produce herself those products which she could no longer purchase from foreign countries. One cannot expect an industrious and inventive nation to lower its standard of living voluntarily. Thus there remained only the way of replacing foreign raw materials by synthetic products, produced from indigenous raw materials.

This way was chosen by Germany. It forced Germany to grant the new industries, at least during the transitional stage, a certain protection against the competition of the cheaper natural products, of which, it is true, there existed a sufficient quantity on the world market, but of which Germany was unable to purchase a sufficient quantity on account of her difficult position in the field of foreign currency. A process thus was repeated which took place during the transitional stages of every modern industrial state from agricultural economy to industrial economy. At that time all these countries supported their industries by protective duties. The development of an industrial state on a natural raw material basis to an industrial state on a synthetic basis was a similar transformation. This too, could take place only under the protection of the state.

Thus, this was made necessary by economic conditions only, without any connection whatsoever with aggressive intentions. On the contrary, it is a voluntary limitation to the resources of the domestic economy. Naturally, the resultant increase in the industrial potential

is also an increase in the war potential. However, this is not the purpose of this development, but only an inevitable result.

Now, Honors, if you reexamine these arguments impartially, you will have to acknowledge that they are correct. It is so you will have to reach my own conclusion, that industrial leaders who participated in such a development cannot be accused of having intended to start a war.

With these facts the assertion of the Prosecution that the I. G., by developing an industry of synthetic products, became guilty of a crime against peace can no longer be upheld. The Prosecution obviously recognized this weakness in its evidence. Therefore, exceeding the argument of synthetic production, it asserted that the I. G. had put its entire production in the service of preparation and waging of an aggressive war. Therefore, the Prosecution concerns itself with a great number of other chemicals, such as chlorine, sulphuric acid, etc. In all countries of the world, these chemicals, are the most common products of the chemical industry. But here, in the production of the I. G., these everyday products are suddenly supposed to be war material. War material and again war material, strategic material and similar material, this is what the Prosecution sees in each and every product of the I. G.

The witness Struss had to compile a list of eighteen products which were told him. This list contains mainly entirely normal peacetime products.

In the English version, this list bears the title "Strategic Products", while the German title is "Important Products". This difference in the titles of both languages, which to me does not seem to be accidental, shows by what means the Prosecution tries to argue. By doing so it shows only the lack of serious arguments.

The worthlessness of such argumentation is clearly shown by the facts stated by General MORGAN, who, as expert witness before this Tribunal, stated verbatim on 11 September 1947:

"It is impossible to draw a strict line between wartime and peacetime material".

General MORGAN furthermore justly refers to the fact that one could forgo plough-shares from swords, and sickles from spears, that one could not prevent, however, plough-shares being reforged into swords and sickles into spears.

In the same manner the synthetic products produced by I. G. can be used as plough-shares or as swords. The taking of evidence has proved that the I. G. had planned to use them as plough-shares only. This applies to nitrogen as well as to methanol, gasoline, and synthetic rubber. In my statements I shall restrict myself to arguments concerning Buna production. The other fields will be discussed by my colleagues and particularly by Dr. Bornemann.

DR. BORNEMANN (Counsel for defendant ter Meer):

The first research work on synthetic rubber - so-called Buna - started in Germany in 1906 in one of the predecessor firms of the I.G. in Elberfeld. Even before 1914 this work met with considerable results. At the same time foreign countries, e.g. England and Russia, worked on the same problem. After the merger in 1925, the I. G. started the experiments again, because new possibilities of development arose. The work was constantly continued and was carried on also during the time of the economic crises. Therefore the work was in process also in 1933.

In the years to come, two facts became decisive for the extension



of Buna production on a large scale in Germany:

- 1) The question of requirements in connection with the German position in the field of foreign currency,
  - a) the favorable results which were achieved by the years of research work.

Immediately after seizing power in 1933, HITLER started to combat unemployment with all means at his disposal. One of the means he wanted to employ was the motorization of Germany according to the example given by America. In 1932, there was 1 car for 4.8 people in the USA, while there was only 1 per 100 people in Germany. Therefore, motorization seemed to be a field with a great future. It offered hopes for work and earnings and was well suited to raise the standard of living of the population. No military aims seemed to be present. The example set by America showed that very far-reaching motorization could be carried out even with the aid of a purely peacetime economy, and that it was of the greatest advantages for the domestic economy.

Such motorization, however, required a huge quantity of rubber. The consumption of raw rubber, including regenerated rubber, in Germany amounted to 85,000 tons in 1935. By 1938 it had increased to 133,000 tons per year. An additional increase in peacetime requirements was to be expected. It was expected that in case of further peacetime development, 125 - 150,000 tons per year, without regenerated rubber, would be required during the year 1941/42.

Natural rubber does not grow in Germany. Because of the unfavorable situation in the field of foreign currency, which in 1931 made it necessary to introduce a regulation of foreign exchange, it was impossible to import a sufficient quantity of natural rubber. Therefore, if Germany did not want to desist from the motorization plan, she had to use synthetic rubber. She was able to do so because research work had brought continuously better results. In this connection, the I.G., when expanding its Buna plants prior to the outbreak of war, remained

absolutely in the frame of the sales possibilities calculated for a peacetime economy. When the war broke out it had under construction production plants with a planned capacity of 70,000 tons per year. This corresponds to about 50% of the quantity required at that time. The production capacity actually achieved at that time amounted to only 24,000 tons per year.

These figures disprove clearly the assertion of the Prosecution that the production capacity for Buna exceeded the proper and required capacity for peacetime development.

The defendants cannot be charged with the fact that some governmental authorities expressed desires or plans which urged an additional and faster expansion. As a matter of fact, Farben, and Dr. ter Meer in particular, opposed those wishes and remained within the frame of such an expansion as they believed to be required by private economy.

The accusation of the Prosecution that the production of Buna in peacetime was quite uneconomical is disproved by the adduction of evidence. The starting of production on a large scale is uneconomical only if the capital invested in this production does not bring any interest or if the new product is so expensive that it cannot be sold or can be sold only with the aid of governmental support, forming an unbearable burden for the general domestic economy. None of these prerequisites are present in the production of Buna. Schkopau and Huele earned dividends, the higher price of Buna products in comparison to articles made of natural rubber was quite tolerable. It had to be taken into the bargain because the unfavorable foreign exchange situation made the importation of natural rubber impossible.

The Profitability of Buna production was not brought about artificially through subventions from the Reich, either. In this regard the Prosecution referred to the loan granted by the Reich to I. G., the guaranty of prices and markets, and the tax alleviation.

In regard to the loan, the private money market was at that time, as

a matter of principle, not open to private industry. This fact was based on government decrees. As a consequence, the taking up of public credits by private enterprise was the obvious way of financing whenever a project was involved, the development of which was in the general economic interest. The way this loan was handled, did not represent a special favor for Farben, either, as it was issued on customary bank terms. If the Prosecution especially points out that the Reich provided the means for the loan by placing a duty on natural rubber, thus protecting the Buna industry at the same time, this is by no means unusual. Other countries too protect their new industries by duties, in most cases by very high ones. Thus, e.g., the USA, after World War I, set up customs duties on dyes in order to protect their new dyestuff industry. These customs duties were 200 % at first.

The tax alleviation for Buna was not based on a special measure, but was the consequence of a law which had already been passed in July of 1933 to boost German business in general, and thus to combat unemployment.

Now the Prosecution claims that the I.G. approached the military authorities on their own initiative in order to win them over for Buna. This is not correct. As a matter of fact, the initiative came from the Army Armament Office, as stated by the witness Struss in Exh. ter Meer 95.

When the Army Armament Office, in the course of negotiations, demanded absolute leadership in the rubber question, the Farben representatives expressly pointed out that Buna was necessary for peaceful purposes and for securing foreign currency. As a matter of fact, the Wehrmacht did not succeed with these demands. It even protested at times against the extension of Buna production. Its requirements up to the war were very small. It must be noted that even during the war the total yearly rubber consumption of Germany never exceeded the yearly peacetime consumption of the last few pre-war years.



Farben deliberately prepared the sale of the new product on the civilian market by corresponding measures. It exhibited its Buna products at the Automobile Exhibition in Berlin in 1936 and at the World Exhibition in Paris in 1937, it sponsored the holding of scientific lectures in Rome, Paris and Baltimore in 1938 and 1939. Representatives of the press were invited to inspect the Buna plant at Schkopau.

It is not denied that - as in all branches of industrial productions - there existed also for that of Buna production a government plan for the event of mobilization, i.e. for the event of war. That is nothing unusual, as shown by the fact that there existed prior to 1933 a "Chemical Defense Committee" in Great Britain, which contained, besides experts from the three Service Branches, also scientists and representatives of the chemical industry.

Thus, one can draw no conclusions in regard to war intentions of Farben from the interest shown by government offices in Buna production. The defendants had no more thought of war in connection with the Buna production branch than in connection with any other branches. They had planned and built these plants for peacetime requirements.

Your Honors, in my arguments regarding the production of Buna I have already touched upon the relations between the I.G. and the Wehrmacht. The Prosecution has, in other connections too, attached special importance to this question, especially when stating its position in regard to the Vermittlungsstelle W and the participation of Farben in the government's general mobilization plan. I am thus forced to go deeper into this matter.

The Defense does not deny that the Vermittlungsstelle W was established in 1935 by the re-organization of an office already in existence, in order to act as intermediary in the regular correspondence between the plants and other offices of the I. G. on the one side and the government offices, particularly the Wehrmacht ones, on the other side.

It denies, however, with utmost emphasis, that the I.G. thereby

started a special initiative for the preparation of mobilization, much less of a war of aggression. The evidence has proved nothing of this kind. The purpose of the Vermittlungsstelle W was, on the contrary, to effect the necessary internal coordination in view of the scale of the I.G. and the number of its plants, in order to save double labor and to avoid having the authorities play off one plant against the other. It had no independent tasks. Its work was, on the contrary, in many aspects of a purely liaison nature. Several witnesses have thus compared its part with that of a "letter-carrier". For this reason it had only a small staff.

Moreover, the Vermittlungsstelle. We kept up contact not only with military offices, but also with the Reich Ministry of Economics. It would thus be entirely amiss to regard the Vermittlungsstelle. We as a general staff of Farben, for the active support of re-armament or such.

The accused members of the Vorstand showed hardly any interest in the work of the Vermittlungsstelle W. Dr. ter Meer visited this office for the first time after the outbreak of war. Its work was considered to be of a subordinate nature. All this, which has been thoroughly discussed in the adduction of evidence, proves beyond any doubt that the Vermittlungsstelle W never had the importance ascribed to it by the Prosecution today.

Just as the defendants had no thought of war in mind when they established the Vermittlungsstelle W, they took no leading part in the drafting of the so-called mobilization plans. The Prosecution claims this to be so; this, however, is not correct.

The mobilization plans and the preceding measures, the so-called investigations of production statistics, were not at all traceable to an initiative on the part of Farben. The first investigation of production statistics was, on the contrary, carried through in 1934 by the Reich Office for Statistics on the basis of an ordinance issued by the Reich Ministry of Economics. It covered all industries, including the

chemical industry and the I.G. The Reich Office for Statistics made compulsory the filling out of the questionnaires sent to the individual firms by referring to the decree of 1923 concerning the obligation of giving required information.

This compulsion to divulge their business secrets concerning production, use of raw materials, sale, stocks on hand, etc., was extremely distasteful to the I.G. For this reason it repeatedly tried to restrict this obligation of giving information. As a matter of principle, however, it had to comply with the ordinances of the state, since a refusal would have been regarded as sabotage, with all the serious consequences resulting therefrom.

The production investigations were replaced from 1937 on for all industries by the so-called production plans and mobilization plans. They were drawn up - according to directives from the Reich Ministry of Economics - for the chemical industry by the Reich Plenipotentiary for the Chemical Industry, in agreement with the Reich Ministry of Economics and the Reich War Ministry. The various enterprises had to supply - in a similar manner as in the production investigation - the required details. Farben did nothing more in this matter. It especially showed no initiative of its own in this work, which it felt in the main to be interference with its proper business activity.

After the mobilization plans had been completed, they were sent by the Reich Minister of Economics and/or the Reich Plenipotentiary for the Chemical Industry to the various plants as a so-called mobilization task. They thus were given the character of an official order.



THE PRESIDENT: Counsel, I believe this would be an appropriate place for our recess.

The Tribunal will rise for fifteen minutes.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

DR. BORNEMANN: Before the recess we were discussing the mobilization plans.

The defendant ter Meer had nothing to do personally with the work of Farben for the mobilization plans, except the work in connection with the mobilization plan for dyestuffs. Nor was he informed in detail about these plans. In the TEA Office headed by Dr. Struss, only the dyestuffs mobilization plan was prepared, after the Reich Plenipotentiary for the Chemical Industry, Dr. Ungewitter, had asked Farben to submit to him a suggestion for the dyestuff mobilization plan of Farben.

The adduction of evidence did not furnish any proof that Farben had any warlike intentions or had known or recognized anything of this nature while working on the mobilization plan it was compelled to draw up. Together with purely military mobilization plans, purely economic mobilization plans had been drawn up in nearly all countries since the experiences of the first World War. This is done on an even larger scale in non-German countries and is not considered to be a violation of international law. This has no connection whatever with preparation of a war of aggression. It is necessary for the waging of a defensive war, too. Thus participation in mobilization plans can be considered punishable only when it serves the criminal aim of a war of aggression or if this is wished by or at least known to the individuals concerned. These prerequisites, however, are not present in the case of the defendants in this trial. Later on, and in another connection, I shall speak more in detail about these matters on behalf of my client Dr. ter Meer.

The question of secrecy is closely linked with the mobilization plan just mentioned.

The Prosecution says that the secrecy measures carried out at Farben point still more in the direction of alleged warlike aims of

the defendants. This contention of the Prosecution cannot be substantiated, either.

Every nation keeps facts connected with its armament secret and protects them through anti-espionage laws and regulations against treasonable acts. Besides, every private enterprise endeavors to protect its plant against the divulging of its business secrets and experiences. International law does not forbid this. Must there be an exception in the case of the defendants and of Farben? They have done nothing to justify an exception to their disadvantage.

The defendants neither provoked nor promoted the secrecy regulations of the state. There is no evidence for an assumption of the Prosecution to the contrary. They cannot be charged with having obeyed government orders concerning secrecy, whose violation would have resulted in extremely severe punishment. They did not know, nor could they know, that such secrecy regulations were intended to cover criminal warlike aims of the government of the state, nor could they conclude from the regulations themselves that such aims existed.

Furthermore, the Prosecution has accused the defendants, in connection with the alleged close collaboration between Farben and the Wehrmacht, that Farben initiated anti-air raid precaution measures and was very active in this special field.

Quite aside from the fact that anti-air-raid precautions are always purely defensive measures, the Defense has proved that in this sphere too the initiative came not from the I.G., nor from the defendants, but that the I. G. followed in a very reserved and hesitating manner, until the outbreak of war, the governmental orders. For the rest, we may say that Germany was permitted by the Paris Agreement on Aviation of May 1926 to take civilian anti-air-raid precaution measures and that, based on this agreement, the German government ordered such measures since 1931, thus before 1933.



The Prosecution not only accuses the defendants of having collaborated in the construction of Germany's war machine, but also of having, furthermore, weakened the war potential of other countries.

The Prosecution was of the opinion that the fact that contracts were concluded between Farben and Standard Oil represented a particularly significant example of the alleged close collaboration of the IG with the Nazi government and of the intentional use of international cartels as a military weapon for the weakening of other countries.

These contracts as a matter of fact, prove the contrary: Their conclusion and the manner in which they were carried out prove clearly the great efforts made by Farben on behalf of the promotion of international business relations and its great endeavor to work in fair collaboration with business friends from abroad for their mutual benefit, beyond the borders of Germany.

I do not have to discuss any further the legal and business aspects of the agreement concluded with Standard Oil, as this has already been done by the defense counsel of the defendant Dr. von Knering, Dr. Falckmann. I shall discuss technical collaboration as far as Dr. ter Meer took part in it. I shall, therefore, restrict myself to the field of rubber synthesis, as other statements, relating to other fields, will be forthcoming.

There existed from the beginning an agreement between Standard Oil and the IG to the effect that the development of Buna, on the basis of raw materials of the mineral oil industry, was to be considered part of the methods which, according to the Jasco agreement, were to be exploited jointly.

The collaboration of the two contracting partners was, therefore, carried out accordingly.

Extensive experiments were carried out jointly in Baton Rouge in the beginning of the thirties, and Farben sent some of its best specialists to take part in them.

These experiments, which aimed at the introduction of German Buna methods from acetylene (Four-step process) in the USA, had no practical success, in particular because, after decrease of the price of natural rubber, commercial exploitation of this method in the USA did not seem to have any future.

The experiments on tires, which were carried out in 1934 in agreement with Standard Oil at the General Tire and Rubber Co. in Akron and which were supervised by the Buna specialist of Farben Director, Stoecklin, also had no results, because of the difficulties in the processing which arose and which could not at that time be conquered. Joint negotiations of Standard, Dupont, and the IG in 1935 had no success either.

Farben itself had at that time no method which would have been suited for conditions in America, and could, therefore, not make it available.

This was also the reason why until 1938 no further steps in the practical realization of Buna synthesis could be taken in the USA.

Besides, the German government had since 1936 explicitly forbidden giving foreign countries any information about Buna. This prohibition had, however, no practical importance until 1938, that is, until the date when it was revoked, upon intervention of Dr. ter Meer, because - as already stated - no method had been found in these years which would have been suited for conditions in the USA.

This prohibition did not however, divert Farben from its aim to develop a rubber synthesis suited for the USA. Upon instruction by Dr. ter Meer, new experiments were carried out in Oppau from 1935, on, for the purpose of obtaining Butadiene.

All this took place in full agreement with Standard. Mr. Howard and Dr. ter Meer maintained a continuous exchange of views regarding the individual steps to be taken. Howard visited Oppau every year and was informed about the state of the experiments. American specialists

visited Germany, in order to study the installations and methods on the spot. The experts of Farben supplied them liberally with information and showed them the pilot plants where the experiments were conducted.

When Mr. Howard visited Germany again in 1938, the experiments in Oppau had progressed to a point where an industrial exploitation for the USA could be considered. This exploitation was now prohibited by the German government, which did not permit the transmitting to foreign countries of information regarding Buna. This did not prevent Dr. ter Meer from systematically pursuing his aim: the large-scale synthesis of Buna for the USA. He succeeded in obtaining the rescinding of the prohibition, after detailed negotiations and a very difficult discussion in the Reich Ministry for Economics. He could, however, not obtain complete freedom of action. He remained under the obligation to inform the Reich Ministry for Economics about the results and the progress of the Buna negotiations with foreign countries. Besides, he had to obtain the consent of the Ministry before the conclusion of any definite agreement.

But even with these restrictions, the rescinding of the prohibition was still a major success, due only to the personal efforts and the clever manner in which the negotiations were carried on by Dr. ter Meer. This is the most convincing demonstration of ter Meer's endeavors to obtain collaboration with American business friends in the sense of the existing agreements. Had it not been so, it would have been easy for him deliberately to carry on the negotiations in the Ministry in such a manner that the former prohibition would remain in force. In that case, Dr. ter Meer could have used this prohibition as a pretext in negotiations with Standard. The fact that he did not choose this way is clear proof that the intentions with which he was charged by the Prosecution were far from his mind, and that he did not have the slightest intention of cheating his American business friends.



4 June - M-LU-8-6-Schwab (Int. Ramlar)  
Court VI - Case VI

After the government prohibition had been rescinded and negotiations could be carried on freely, Dr. ter Meer went

to America at the end of 1938, to continue working for his project of a large-scale American production of Buna. He took with him the foremost Buna expert from Oppau, so that he might examine on the spot the possibilities for the construction of a plant and collaborate with the Americans in the planning.

Standard invited Dr. ter Meer to state his plans in a conference of the executive committee, in the presence of the leading members of the board of Standard Oil of New Jersey. There he proposed to continue experiments on tires in the USA in order to insure a market for large-scale production and to secure potential buyers for Buna. Four large American tire firms should be approached for this purpose in order to obtain their collaboration in these experiments. Dr. ter Meer and his German colleagues personally carried on the negotiations with the presidents of the enterprises concerned and obtained their agreement to the experiments, which were then carried out in the spring and summer of 1939 under the direction of an expert who had been made available for this purpose by Farben. At the outbreak of war in Europe in the summer of 1939, the experiments had not yet been concluded. The results obtained by them were, however, satisfactory.

It is correct that at the time of ter Meer's visit in November and December 1938, no final agreement was reached between Farben and Standard. This was, however, not because of Dr. ter Meer's attitude. The reason was, rather, that the management of Standard did not share ter Meer's enthusiasm on the possibilities of Buna development and wanted to wait for the outcome of the tire experiments. After the first new experiments had been successful however, Farben and Standard agreed, in the summer of 1939, to start negotiations in the autumn of 1939 for the conclusion of a contract. Ter Meer, Ambros, and von Knieriem had already planned a trip to the USA for this purpose, when the outbreak of the war rendered these plans impossible.

These are the bare facts which resulted from the adduction of evidence.

An almost unbelievable force of imagination is indeed necessary to be able to deduce from these facts what the Prosecution called, on 16 February 1948, the basic foundation of its charges, namely, "that the defendantsthereby carried on international negotiations in a manner which resulted in an intentional delay in the development of certain methods essential to war production in other nations and in the simultaneous promotion of similar developments in Germany and that they did this in cooperation with the Nazi government, in the pursuit of a policy which aimed at rendering the Nazi war machine more powerful than all other countries."

The facts do not bear out this conclusion of the Prosecution. The course of the negotiations shows that they were carried on by Dr. ter Meer - I now quote Mr. Howard - "always in a fair and reasonable manner". The development of Buna production does not represent a "method essential to war production", but the creation of an artificial product for use in peacetime, such as were produced by the progress of science in various other fields and for the most varied purposes. The transition from natural products to artificial products and their synthesis is characteristic of the modern industry of all civilized countries. This transition is the result of the progress of natural science, as Dr. ter Meer recognized with foresight at an early date with regard to rubber, and therefore made a sincere effort, in Germany as well as in the United States, to promote the development of Buna synthesis and its exploitation by private industry. His conduct can, therefore, by no means be considered a criminal offense.

Farbon did not have any intention of weakening the war potential of foreign countries, either in the field of Buna synthesis or in any other of its production branches. Evidence has proved that Farbon indeed concluded with American firms a great number of contracts in all fields of chemistry, connected with the transmission of information. Dr. ter Meer testified that it was the closest collaboration with a certain country of which he had ever heard, and that he did not believe that there exists an



American or English enterprise which has concluded a similar amount of contracts with foreign firms of the chemical industry. Farben also concluded, with French and with English chemical concerns, many contracts satisfactory to both parties. These facts prove that there existed at Farben no basic attitude aiming at the weakening of the war potential of any countries inimical to Germany. Thus I conclude my statements on Count I of the indictment and turn to Count II.

DR. BERNDT: We may now turn to Count II. First, however, I must point very emphatically to one circumstance:

Dr. ter Meer has testified in detail in the witness stand on several subjects, including Francolor and Poland. This was necessary because the facts of these cases were, not yet clarified during his interrogation and because several co-defendants could not be heard, as they did not testify on the stand. The statements of my client therefore served mainly to clarify the facts in the interest of a correct evaluation, but did not serve his personal justification. I must emphasize this particularly, in order to prevent wrong conclusions being drawn from Dr. ter Meer's examination, to the effect that he feels guilty regarding these cases. I must also point out that Dr. ter Meer did not give his testimony on the stand from his own knowledge of these incidents at the time of their occurrence - in part he knew nothing of them - but from findings which he had made through documents here submitted to him, and through conversations with colleagues which took place only here in Nurnberg.

Count II of the indictment was discussed primarily by my esteemed colleague, Dr. Siemers. I restrict myself, therefore, to pointing to several factors concerning my client Dr. ter Meer.

Firstly I shall discuss the case of Poland. The Polish dyestuff plants were, after Poland's collapse, placed under government administration, carried out by government commissioners. The appointment of commissioners did not represent a confiscation of these factories from their

owners, neither was it a cover for taking over for Farben the assets of these plants. The reason for the seizure was the endeavor to maintain these plants in their state. The adduction of evidence has clearly proven that the preservation of the factories served the interest of the indigenous population. Wela was, when reached by the German troops, already greatly damaged, partly looted, and abandoned by its owners. Boruta had been abandoned by its directors and by the majority of its employees, and work there had stopped. Both factories did not have any cash. Both factories would not have been able to continue their production without intervention by the German authorities and would probably have been destroyed through neglect. Evidence has shown, without any doubt, that Farben did not from the beginning plan measures to incorporate or annex these factories to its concern. The administration by a commission rested with the government authorities, who considered the initiative taken by Farben merely as a suggestion. The Commissioners, however, carried out the administration of the factories on their own and on their proper responsibility. The witness Schwab has testified that Dr. ter Meer confirmed the fact that the officials of the IG considered the commissioners only as government officials, and that they therefore refused to give any instructions to them.

The appointment of the Commissioners was carried out by the Reich Ministry for Economics which was entirely free in its decisions. In case the appointment of the commissioners was originally suggested by office of Farben — it was not ter Meer — it has to be taken into consideration that it was forced solution made necessary by the conditions. Such administration by a commissioner has been recognized as not punishable in Case IV, with regard to the Rombacher Huettenwerke. If one wishes however, to consider the actual length of the government administration by a commissioner, beginning at a certain date, as a confiscation of property violating the regulations of International Law, one must not

overlook the fact that the administration which was originally suggested by Farben lasted only a short time. It was ended by a general confiscation of Polish national and private property. This took place as a result of the taking over of the administration in Poland by civilian authorities, based on German laws and regulations. These two facts, namely the taking over of the plants by commissioners as suggested by Farben and the general confiscation based on German laws, are not in the least related, either in their basic principles or in their results. As a consequence of these government laws, the 3 factories would have been confiscated even if there had been no previous administration by a commissioner. The factories were therefore seized twice, once by the appointment of a commissioner as administrator, and subsequently by the general confiscation. Farben had no part at all in the second and final confiscation through the new laws. The former commissioners were retained as trustees after the general confiscation for reasons of expediency, as both were experts and already knew the plants.

The legal confiscation of the three plants already being managed by government commissioners was a basic change in the situation, a change in which none of the defendants took any part. None of the defendants is therefore to be held responsible for it. The two commissioners, who after the general confiscation became trustees, were independent delegates of the government who had nothing to do with Farben, and with whom Farben had nothing to do either. This is the reason why Dr. ter Meer explicitly pointed out to the witness Schoener that he was a government commissioner and had to act according to instructions of the government. With regard to the purchase of Boruta I want to point to the following facts:

It was in the interest of the Polish economy to maintain work at the factory. This was very difficult, because, apart from the fact that the factory was, from a technical viewpoint, badly equipped, it lost, through the division of Poland, a part of its market. The protective



duty was also eliminated. It was therefore very difficult to operate the plant, as stated by the witness Schwab. Commissioner Schwab therefore repeatedly requested the assistance of the IG, which was granted through the placing of important orders and allocation of considerable advance payments.

Work at Boruta could, however, be continued, only if it was re-organized and provided with a great amount of new equipment, as their installations were technically not up -to-date. The missing items could be supplied only by Farben. Farben was ready to invest the necessary capital and to furnish the required experiences. Farben could, however, not be expected to furnish its experiences to a firm which perhaps would become its competitor later on. Nor could Farben be expected to furnish to Polish chemists, foremen, and workers experiences which these men might subsequently use to the disadvantage of Farben. A lasting cooperation had, therefore, to be established between Farben and the Boruta. Farben wanted, therefore, to lease the factory, a thing which would not have represented a change in the ownership. The factory had gained in value by the re organization. The Trustee Office rejected this and proposed to Farben a purchase of Boruta. As close cooperation of long duration could not be reached by any other means, but since the plant, for the above-mentioned reasons, had to come into a relationship of long duration with Farben, if it wanted to keep on existing, there was nothing left to do but to consent to the purchase suggested by the government office, especially since Farben had already advanced considerable sums to the enterprise. It was in this case neither robbery nor spoliation.

Half of Winnica was owned by Frenchmen, the other half by Farben. It had been confiscated on account of its partly French ownership. Farben secured the French share in Winnica by the Francolor agreement. In the opinion of the Prosecution this represents an additional robbery. The adduction of evidence in no way justifies this opinion. The agreement

4 June 1941 SW 9-7 Schwab (Ressler)  
Court 6, Case 6

with the French was made on a voluntary basis. The adduced evidence did not prove any coercion. The sentence of a French court submitted does not prove anything in this case, since the French court has by no means clarified matters. Farben was not heard in the French proceedings, could not adduce evidence or defend itself. In my opinion this sentence cannot be a precedent for the decision of this Tribunal. My client Dr. ter Meer negotiated with the French about this agreement in July 1941. He did not exercise any pressure nor make use of it. No crime occurred here.

Now, then, is the participation of the defendant ter Meer in the Polish matter to be assessed? Dr. ter Meer is an engineering chemist by profession. The activities of Farben in Poland were based on purely commercial considerations. In consequence, the technical expert did not play any leading or responsible part in the matter. Except for the purchase of the Winnica stock, he did not take in any negotiations conducted by Farben with third parties. In the internal deliberations of Farben, he did not play a leading part in the Polish issue. No proof whatsoever has been produced to the effect that Dr. ter Meer co-operated in the initial measures of I. G. aiming at the taking over of the Polish plants. In the ensuing stages, he kept himself within the strictly technical sphere throughout. His signature appears only on two of the letters submitted by the Prosecution. These letters concern the legalization of the change of the name of the Boruta firm. However, this change happened long after the date of the purchase. It did not influence the course of events as such and was but an insignificant technicality.

As far as the other offenses alleged by the Prosecution are concerned — such as the closing down of Wola and the taking over of dyestuffs and certain machines — not even a remote participation of ter Meer exists. The Prosecution has not even offered any evidence to the effect that he was informed of these acts.

Your Honors, you will admit that the problem of international law involved in this matter are not exactly what you might call elementary. Even a lawyer will not find it easy to decide whether or not purchases from government authorities (as a matter of fact, the objects concerned were purchased from government authorities in Poland) are admissible in International Law or not. Ter Meer is a technical expert. He dealt with technical problems. It was the task of the numerous lawyers of the I. G. to solve legal problems.



It may be that the lawyers did have some doubts with regard to the purchase, but it has not been proved that such doubts were mentioned to Dr. ter Meer. If no legal objections were brought to his notice, he was fully entitled to take it for granted that the transaction was legal. If the lawyers omitted to inform him of their objections, they may be held responsible; it is impossible to hold Dr. ter Meer responsible under these circumstances. For these reasons, Dr. ter Meer's participation in the Polish issue, if any, does not constitute an offense.

With regard to the Francolor case, I can again refer to the comprehensive and well-substantiated explanation given by my learned colleague Dr. Siemers. With regard both to the facts and to the legal aspects, I shall restrict myself to a few short remarks. Insofar as Dr. ter Meer dealt with the Francolor transaction at all, he did so only in his capacity of a technical dyestuffs expert. The handling of the commercial and legal problems involved remained outside of his jurisdiction and professional qualification.

The evidence has shown that Dr. ter Meer did not take part in the discussions with German government authorities preceding the Francolor negotiations. It was only at a later stage that Dr. ter Meer cooperated as expert for the technical questions involved; this happened only at the time when Farben made contact with the French partners via the Armistice Commission, and when an initial conference under the direction of the Armistice Commission was planned. At the two meetings which took place in Wiesbaden in November 1940, he did not intervene in the direction of the discussions. Dr. ter Meer has stated on the stand that the trenchant language used by Minister Hammen came as an unpleasant surprise to him and to the other Farben executives attending. They felt relieved when they were in a position to continue the discussion next day in the absence of government representatives and in a tone better adapted to a business

conversation. In the course of the next months, the negotiations were continued, and a basic agreement with the French partners was reached in March 1941; during this stage, too, Dr. ter Meer's participation was restricted to the technical aspects.

The discussions were conducted in an easy and friendly manner. Both the convention and the charter of association — the latter drafted by the lawyers of the French firms — were discussed page by page with the French representatives, and in their final form the desires of both parties were taken into consideration. Neither during these conferences nor otherwise did Dr. ter Meer ever put any pressure on his partners on the other side. He did not purposely create conditions by which the French partners were forced to approve of, and to accept, the agreement. The admitted fact that the French dyestuff factories to be amalgamated by the Francolor agreement were in a difficult position was caused by the general situation brought about by the occupation of France and her being split up into two zones; it was not brought about by Farben or by the defendant ter Meer. This issue has been given particular emphasis by the Prosecution. Do they mean to say that in a country under military occupation no agreements at all may be concluded between indigenous industrial firms and a private industrial firm of the occupying state? In Article 43 of the Hague Rules on Land Warfare, it has been laid down that the occupying power shall take all measures at its disposal in order to restore and to maintain public order and economic life as much as possible. The Francolor agreement was an efficient means to fulfill this task. If I. G. had kept aloof from the French dyestuffs industry completely, then the aforementioned economic difficulties prevailing in France would have forced the plants to close down; dismantling and deportation of the workers to the Reich would have been the necessary results. When Dr. ter Meer finally affixed his signature to the agreements approved by all parties concerned,

including the French government, he was fully entitled to feel that he had co-operated in a fair and justifiable agreement, even if protracted negotiations had been necessary to bring it to a conclusion. In the case of Dr. ter Meer, the charge of having taken part in spoliation and looting is unfounded, all the more as it is due to the Francolor agreement that the French dyestuff plants survived the war years very well indeed. This applies to their staff as well as to production and profit.

The assertion of the Prosecution that it was the intention of Farben to loot the French dyestuff industry can easily be refuted by the following fact: As soon as a basic agreement on the Francolor transaction was reached, in other words even before the agreement was signed officially, I. G. assisted the prospective Francolor plants by attaching to them several of their most efficient dyestuff experts and by placing orders with them. This was mainly due to the defendant ter Meer. Later on, this assistance was continuously extended and strengthened; I. G. even supplied Francolor with high-grade semifinished products. On Dr. ter Meer's initiative, the exchange of experience between Francolor and Farben was greatly promoted, which applied in particular to new products. In this connection, I refer to the evidence submitted.

The assertion of the Prosecution that special apparatus was removed from France and brought to Germany by I. G. is wrong. It has not been proved by the Prosecution. As far as Francolor is concerned, the contrary is true: I. G. even put machinery at the disposal of Francolor: A valuable and modern installation from the Farben plant at Ludwigshafen devised for the production of formaldehyde. The defendant Dr. ter Meer deliberately saw to it that his experts did not make an appearance in the prospective Francolor plants before a basic agreement on the Francolor transaction was reached. His intention was to avoid even the appearance of industrial



espionage.

The Prosecution has not succeeded in proving the assertion that Farben intended to integrate Francolor in the German armaments program. Both I. G. and the defendant Dr. ter Meer endeavored throughout not to estrange Francolor from its proper purpose, the production of dyestuffs and semifinished products. In the long run, this proved extremely difficult, as the existing government regulations rationing and controlling economy increasingly restricted the production of dyestuffs, semifinished products for the textile industry, and other peace-time products. The government authorities controlling economy forced Francolor to set up a production program for the requirements of the armed forces. However, this program never involved powder, explosives, or poison gas, but only innocuous raw products, all of which were sent to Germany for further processing. It has been proved by statistical figures that not more than 18% of the total output were delivered to Germany at any time. In 1942, direct deliveries to the Wehrmacht amounted to 5% of the total production at the utmost.

Finally, the defendant has been charged with having taken part in the deportation of French workers to the Reich. As far as Francolor is concerned, no proof whatsoever has been submitted for this charge. In this respect, I refer to the counter-evidence produced by the Defense on behalf of the defendant Ambros. In the initial stage, it was a French request that French workers and salaried employees be transferred to the I. G. plants. The idea was to exchange French prisoners of war for young French workers. When later on workers in France were recruited (erfasst) by order of the French government for employment in Germany, only a relatively small number of Francolor workers were affected by this measure. In the case of those Francolor workers who had to be transferred to Germany according to this order, Farben saw to it, in compliance with a

desire of M. Frossard, that these workers were transferred to Farben plants. In those plants, better care was taken of their welfare than elsewhere, and they remained in their previous types of occupation. Thus, the practical implementation of the Francolor agreement, too, does not incriminate Dr. ter Meer in the sense of the charges raised by the Prosecution.

May I add some words on behalf of the defendant Dr. ter Meer in connection with the acquisition of the dyestuff plant in Hueslhausen and oxygen plants in Lorraine? My client did not take part in the negotiations resulting in the acquisition of these firms. The discussions were conducted by the commercial and legal experts of Farben. It was at a Vorstand meeting that Dr. ter Meer first heard of the acquisition of the oxygen plants. As far as the Hueslhausen dyestuff plant is concerned, the acquisition of this plant was compatible with the plans and intentions of the previous owners. The plant formed part of the Kuhlmann combine. In the course of co-operation with Francolor, friendly relations with the executives of this combine had been greatly strengthened. An agreement had been reached with these executives to the effect that the question of the Hueslhausen plant was to be settled after the war; by that time, it was felt, a solution adapted to the conditions then prevailing and acceptable for all concerned would be reached. In consequence, in this case, too, Dr. ter Meer cannot be charged with unfairness, not to mention a criminal offense.

I shall now discuss the charges raised by the Prosecution under Count III.

In this connection, the first charge raised against Dr. ter Meer implies that he co-operated in the selection of Auschwitz as the location for a new — the fourth — Buna plant, and that this selection was partly caused by the consideration that Auschwitz concentration camp inmates could be used as workers for the construction of the new

plant.

In order to understand the facts concerned, it is necessary to deal briefly with the background of the construction of the Auschwitz plant. The project of the competent supreme Reich authorities to have Farben construct a Buna plant in the East dates back to an earlier period. At that time, Farben did not favor this project. In fact, Farben succeeded in having the plan dropped, although the construction of a plant in Rattwitz (Silesia) had already started. This fact has been clearly established by the evidence. It proves that the initiative of building a plant in the East did not emanate from Farben and that Farben even rejected such plans. As a matter of fact, Farben intended to construct the new Buna plant in the region of Ludwigshafen. This plan was definitely adopted. Before the discussions concerning this third project were completed, Farben received an order (Auflage) for the fourth Buna plant.

All this follows quite clearly from the documents submitted by the Prosecution. The urgent letter of the Reich Ministry of Economics dated 8 November 1940 reveals that on 2 November 1940 a conference was held in the ministry, which resulted in an order to the Farben plant to start a fourth building project in Silesia. This order emanated from the Reich Ministry of Economics and the Reich Office for Economic Development, both supreme Reich authorities.

Farben could not but comply with this order and drop its opposition to the construction of a new plant in the East, as this project had been adopted definitely. This background story alone shows that it had not been the original intention of Farben to construct plants in the East and to use building workers from concentration camps for their construction; on the contrary, this project was forced upon Farben by the state authorities.

The construction of a Buna plant in the East once having definitely been decided upon, the solution of the location in Auschwitz was in no way influenced by the existence of the Auschwitz concentration camp.



Tar Meer and the other executive who selected the location were directed only by the consideration that the economic conditions prevailing at Auschwitz were particularly favorable for this construction project. Coal, lime, and salt deposits were in easy reach. The site was situated on a river carrying a sufficient amount of water even in summer time; thus, the river could be used both for generating energy and for receiving waste. Traffic conditions were excellent. The building site was level and offered a solid foundation. All these circumstances made Auschwitz the ideal location for the new plant.

In spite of all these considerations, the Prosecution asserts that the existence at Auschwitz of a concentration camp and the availability of inmates of this camp as construction workers had been co-instrumental in the selection of this location. Very strong intrinsic reasons render this assumption improbably.

The first objection militating against this assumption is the aforementioned fact that Farben had in the beginning been disinclined to construct a Buna Plant in the East. This fact alone proves that the possibility of using camp inmates for the construction of the new plant was not even considered by Farben. Another consideration militating against this assumption is the fact that, according to experience gained during the war in the U.S. as well as in Germany, and manpower problems are at present much less decisive in the selection of the location of a new industry than they were in the past. Modern organization and modern means of traffic make it possible to ship even very large numbers of workers very quickly to the place where they are wanted. However, the decisive objection to the theory of the Prosecution is the fact that at that time nobody in Farben had a concrete idea of the extent to which concentration camps could be used as a reserve of manpower. Experience in this field was altogether lacking. Thus, it is nothing but posterosus to assume that Farben, in choosing the location of the new project, took a completely unknown and uncertain factor, such as the use of prisoners as workers, into consideration.

This is unequivocally confirmed by two memoranda written by the defendant ter MEER on 10 February 1941, in other words by two authentic contemporary documents, submitted as exhibits No. 1414 and 1415 by the Prosecution itself. In these memos, ter MEER enumerated the reasons for the selection of Auschwitz in the most detailed manner, but he did not even hint at the existence of a concentration camp in Auschwitz or at the possibility of using inmates of such a camp as construction workers. This proves that ter Meer did not even think of employing

prisoners, all the more as one of the two memos contained a lengthy statement on the means by which the manpower problem in Auschwitz could be solved, namely, by the creation of a workers' settlement.

To sum up, ter Meer was not aware of the existence of the concentration camp in Auschwitz when he approved of the decision that the new Buna plant ordered by the Supreme Reich authorities was to be located in Auschwitz. He can, therefore, not be held responsible for the employment of prisoners orders by Goering. After the receipt of the Goering order, dated 19 February 1941, I.G. was forced to accept the commitment of prisoners in the construction as an accomplished fact and to abide by it. If I.G. had refused to employ concentration camp inmates, this would in the conditions then prevailing have been considered sabotage and severely punished. Thus, the Vorstand members of the I.G. were in a state of duress. No choice was left to them, all the more as the Auschwitz plant was considered of the utmost importance for the war effort. A position of this kind has in the Flick judgment expressly been acknowledged as a state of duress, a state of necessity, by the American Military Tribunal.

The defendant ter Meer is, therefore, not responsible for the consequences possibly resulting from the fact that Farben was ordered to employ prisoners in its Auschwitz plant. Ter Meer only took part in the selection of the location. Otherwise, he had no influence on the management of the plant and in particular on the social welfare of the workers employed in the plant. Neither in his capacity of chairman of the Technical Committee nor in his capacity of chief of Sparte II was ter Meer concerned with the construction of the plant. This was the exclusive task of the local plant management.

In his capacity as chairman of the Technical Committee, ter Meer admittedly took part in the granting of the so-called construction credits which obviously included the expenditure required for the accommodation of the workers and for their social welfare. This did not



however, imply a personal responsibility of ter Meer for the welfare of the workers in the plant. This task in no way came within the functions of the Technical Committee, the Technical Committee only provided the funds necessary for the construction of the new plant.

It is true that Dr. STAUSS submitted to the Technical Committee statistics concerning the employees of the more sizable Farben plants, but this was done only in order to convince the Technical Committee of the necessity of granting funds for the new installations under construction. This procedure never implied the extension of the jurisdiction of the Technical Committee; which jurisdiction never included the social welfare of the workers employed in the various plants.

In spite of this, I do not hesitate to admit that in his capacity of a Vorstand member of Farben the defendant ter Meer would have had the duty of taking action if he had heard that the concentration-camp inmates employed in the camp were badly treated, and if he had been able to do away with the grievances. Here, too, the axiom applies: ultra posse nemo obligatur, in other words: if no possibility at all exists to prevent the results of an act, then there is no possibility to adjudicate criminal responsibility for such results.

However, the defendant ter Meer never heard that the prisoners employed in the Auschwitz construction were badly treated. Each of his two visits in Auschwitz in 1941 and 1942 were restricted to a few hours, and he did not form any impressions which would have made it incumbent on him to intervene. Auschwitz gave him the impression of a large building project in which prisoners and free workers cooperated.

As far as the killings and cremations in the Auschwitz concentration camp are concerned, not even rumors reached ter Meer before 1945. When interrogated by the Prosecution, the witness Struss stated that he had probably mentioned such rumors to ter Meer. However, when the witness was cross-examined on 5 May 1948, he rectified his statement

spontaneously and declared that he now remembered distinctly that he had not discussed this matter with ter Meer.

Neither the visit to the Monowitz camp nor the visit to the concentration camp Auschwitz proper gave ter Meer any indication that the prisoners were treated in an inhuman way. The very fact that ter Meer, a man of intrinsic decency, made those visits, is as such strong indication that ter Meer did not even have an inkling of concentration-camp atrocities. During these visits, ter Meer was deceived by the SS in the same way as very many other German and foreign visitors. If the SS even managed to deceive visiting commissions of the International Red Cross, then it is obvious that the SS easily managed to mislead by camouflage a man such as ter Meer, who lacked the experience of the members of international investigating bodies.

The defendant ter Meer can, therefore, in no way be held responsible either for the commitment of prisoners as such nor for the treatment meted out to them. So much as to the most important charges preferred against my client by the Prosecution. Unfortunately I am unable to find out exactly what he is charged with, because the Prosecution from the very beginning has abstained from explaining exactly what charge has been preferred against the individual defendants. Why? Because it is unable to do so. The Prosecution just cannot tell exactly and prove with what it charges the individual defendant. And since it cannot do this it uses a legal dodge, a legal trick: it puts them together and throws them, so to speak, into a big pot which it labels: conspiracy. I am sure that the Prosecution became convinced at least during the trial that there is no conspiracy in this case. But it sustained this allegation because otherwise it would have had the biggest trouble with evidence!

I believe that after evidence has been produced and my colleagues have expressed their views I do not need to discuss the charge of conspiracy any more. It has to be proved in the case of each defendant,

therefore also in the case of my client ter Meer, in a manner excluding any reasonable doubt what individual crime he had committed. When examining this issue you have to consider decisively what ter Meer was, particularly what position he held with Farben and what responsibility resulted from this position. Ter Meer was a member of the Vorstand. I shall not go into the significance of this position, since anything necessary about it has already been told to the court. Neither shall I go into the matters of the Central Committee.



The most important position held by Dr. ter Meer in Farben was probably that of chairman of the Technical Committee, the Tea, the highest technical corporate body of Farben. Before and during the trial ter Meer has thoroughly explained Tea, its creation and importance. If one wants to judge this position one has to keep in mind the following: According to Tea's business rules its tasks were the following: "all technical and scientific problems of the I.G. as well as other fields insofar as they are connected with these problems." This was dealt with at Tea meetings. They started with informing the leading technicians of the Farben by technical and scientific lectures. Then the so-called credits were dealt with, which had been thoroughly prepared during previous commission meetings. Problems of contracts were discussed only if they were of a technical nature. In earlier years worker problems were discussed in the Tea. After its reorganization in 1938 by Dr. ter Meer problems of employment were on principle not dealt with any more, since this was the task of the Reichsfuehrer and the Personnel Offices of the individual plants. It is important to keep the following in mind: Tea was not a corporate body which could make decisions or execute them. It was not a deciding agency but merely an agency which expressed opinion. It examined the situation, suggestions, documents etc., issued an opinion about them, and then made its suggestions to the Vorstand, which regularly held its meeting on the next day. The Vorstand then decided what was to be done. This, not the Tea, was the deciding corporate body. The Tea did not have to supervise the execution of new installations approved by the Vorstand on Tea's suggestion. It did not possess such a right and such a duty. As chairman of the Tea, Dr. ter Meer was not a superior of other members, particularly not of other co-members of the Vorstand. He was only primus inter pares. In Farben members of the Vorstand were completely equal among themselves. No member was superior to another, none subordinate to another. Neither was the chairman of the Tea a superior of the Sportsfuehrer and

Betriebsfuehrer. He had no right to issue directives to them, neither was it his duty to supervise them. This was a result of the Tea's nature; it was a corporate body which expressed opinions but did not make decisions. It is necessary to establish these facts clearly in order to explain exactly the position of Dr. ter Meer, to understand what he did, and for what he is responsible.

Now then, what actually did the Tea, particularly Dr. ter Meer, do with regard to the charges which have been preferred against Farben. To give you a picture of Tea's activities, I have submitted the records of 17 Tea meetings held between 20 October 1936 and 7 August 1939. This period begins with the proclamation of the Four-Year Plan in October 1936 and ends with the outbreak of the war in September 1939. A survey of these records shows that the Tea was engaged in its normal tasks during this time. In these records you will find not one reference to mobilization plans, Vermittlungstelle W, measures for air-raid protection, maneuvers, and the like. Lectures, with which every Tea meeting began, concerned all fields of work of Farben. They also characterize the lively collaboration with foreign countries. Ter Meer reported during his examination in court on the investment policy of Farben. The new installations constructed by Farben, from 1925 to 1939 are such that the expenses incurred for them are in no way exaggerated. This is particularly shown by a comparison of expenses after 1933 with expenses during the years 1925 - 1929. In exhibit 44 I have reproduced a number of excerpts from Tea records from the period 1938/39 which show irrefutably that an attempt was made by every means to limit expenses for new installations, and to reduce them to the amount of normal depreciation. These attempts to limit expenses for new installations appeared already at the Tea meeting on 23 June 1937. At this meeting, on a motion of Dr. ter Meer limits were set for expenses for the new installations of the three Sparten, and at the Tea meeting on 17 December 1937 it was decided furthermore that "the technical

installations of Farben should not be expanded beyond the present state." In 1938, from 7 April until 15 September 1938, i.e., for 5 entire months, no Tea meetings were held in order to prevent a possibility to grant permission for new installations. Owing to this energetic action of ter Meer, expenses for 1939 could be considerably lower than those of the previous year. Thus the 17 records of the Tea covering the period from the proclamation of the Four-Year Plan to the outbreak of the war show clearly the continuous endeavors of Dr. ter Meer to limit expenses for new installations. Starting from the proclamation of the Four-Year Plan, Dr. ter Meer in his capacity of chairman of the Tea succeeded in preventing Farben's becoming an instrument, destitute of its own will, of the economic policy of the Third Reich. This is the true picture of Dr. ter Meer as chairman of the Tea, not the distorted one drawn by the Prosecution which wants to represent him as a benchman of the economic policy of the Nazis.

Furthermore, Dr. ter Meer was the chief of Sparte II. The Sparte of ter Meer comprised mainly dyes, but also other products, e.g. pharmaceuticals and chemicals. There were so many of them that one man could not survey the manifold work of this Sparte. Advanced special knowledge is necessary for this purpose, one brain cannot compass all of it. Because of the scope of his Sparte, ter Meer of course did not and could not learn of everything which happened there. Much information could not be given to him since it was secret, e.g. the invention of Tabun in Elberfeld and the production of Aldesit in Uerdingen. Ter Meer as Spartenfuehrer was not a superior of other members of the Vorstand, working in his Sparte, who were chiefs of the idg plants. He was only a primus inter pares, exactly as he was as the chairman of the Tea, and like the other Sparten-leiter. The other members of the Vorstand were not subordinate to him. They could not be. They were his colleagues, among them men of an advanced age and of international reputation. Thus there was no possibility for him as a Spartenleiter



to interfere with the competencies of the Betriebsfuehrer. He had no right to issue directives to other members of the Sparte, neither was it his duty to supervise them.

The technical management of the individual plants was independent. One should not forget that the individual plants were based on an old tradition which increased their independence. I deliberately refrain from discussing the other positions held by ter Meer in Farben, as a member of various committees. I explained them during the examination of ter Meer. I also shall not occupy myself with his positions outside of the I.G. May I only refer to the conspicuous fact that, as the witness KUEPPER emphasized, ter Meer held very few official and semi-official positions. From this one can no doubt draw the conclusion that he was not connected with the Nazi system, especially with economic organization in the Third Reich. I must refer briefly to one position only, since the Prosecution has emphasized it particularly, namely the one in the Economic Group Chemistry. Ter Meer had been a member of the Economic Group Chemical Industry and since 1942 deputy chairman of the Praesidium. This Praesidium convened for the first time in the middle of March 1943 and dealt only with problems of organization during this year. According to the testimony of the president of the Economic Group, SCHLOSSER, ter Meer hardly ever cooperated in these activities. Owing to his departure for Italy on 15 September 1943, this activity was completely discontinued.

Starting from this moment, i.e. from the middle of September 1943, ter Meer did not work for the I.G. any more. His connection, loose at the beginning soon became very slight owing to the local separation and then was ended completely, so that he was not informed any more about the current business of Farben; for the things that happened after 15 September 1943 in Farben ter Meer cannot be held responsible.

There is one point which has to be stressed very clearly. The Defendant Krauch was appointed to the Office for German Raw Materials and Substitutes in 1936, and there became chief of the Chemistry section.

Neither the Vorstand nor the Central Committee had any knowledge of his appointment. There never was a resolution adopted about it. From 1936 onwards Krauch did not participate in any meeting of the Vorstand, Central Committee, or Tea. On the request of ter Meer he resigned from his position as Sparte chief. A correct separation between the individual Krauch, as a still nominal member of the Vorstand of Farben, and the office Krauch, as General Plenipotentiary for Chemistry, was always observed. Both the Vorstand of the IG and Professor Krauch himself attached the greatest importance to that. This proves that all that concerned Krauch as General Plenipotentiary Chemistry cannot be put on the account of Farben and its individual Vorstand members.

Your Honors:

If you have to pass a judgment then do not judge the member of the I.G.Vorstand but the man Fritz ter Meer. Now then, who is ter Meer? The evidence showed a clear picture of him which probably has been impressed upon your mind. He was the first of the defendants who left the dock and was permitted to ask the expert witness General Morgan material questions. Even as laymen you probably realized then that ter Meer is a technician with a considerable knowledge. He was brought up the hard way. His father had him work in his own factory. He did this not to spoil him there, on the contrary, he kept him well up to the mark. He had to do the simplest, dirtiest jobs, he had to crawl like the other workers into boilers; but as he shared the work he likewise shared his buttered bread with the workers and shared their troubles. When he came into the Vorstand he took care of them and above all prevented the Uerdingen factory from being shut down even during the worst times so that the workers continued to work there. He worked indefatigably for the factory. He demanded much from everybody, but from himself most. He was strictly objective and especially just. His sense of justice went so far as to refuse a raise in salary even to friends if he considered it unjustified, as the witness Kuepper testified

here.

A sincere, open man who devoted all his working capacities to the welfare of the factory. Always objective, never personal, a gentleman, incorruptible, always correct, unpretentious, absolutely reliable. His sincere, straight way of conducting negotiations was appreciated by foreigners; it was never paltry and was governed by principles of particular fairness.

Ter Meer has a stubborn character which always kept him free from influence of mass psychosis. His development was influenced by his long stay abroad during his youth and by his long-lasting activities in USA during his maturity. Ter Meer was remote from chauvinism and byzantinism.

Ter Meer was always fulfilled his duties toward the church, so that the presbytery of his home community interceded for him without reservation.

One feature of his character is conspicuous; his great sense of responsibility which you probably observed during his examination.

Shortly after the World War Ter Meer became a member of the local government of his home town as a democrat. This was his only political activity. Otherwise he kept out of politics. He did not, like many, join the Party immediately in 1933; neither did he, like others, join an affiliated organization, e.g. as motorist the NS Motor Corps. He kept aloof. In 1937 when the Gauleiter requested him to join the Party he refused. Not until he was told that in such a case he would not get a passport for travel abroad, i.e. he would be deprived of the possibility to make business trips and to visit his daughter and grand children abroad, he decided to yield to pressure and became a member of the Party, but abstained from any political activity. He openly criticized the activities of the Party bosses. He publicly attacked the degeneration and the moral decay of the state administration; he particularly despised the racial theory; after the program in 1938 he called



it a crime which no government could commit without punishment, he said this before many people in the casino of the Farben without any regard to the attending staff.

He continued his relations with Jews after 1933 in a markedly friendlier way; he helped many of them especially by providing jobs for them abroad. No picture of HITLER decorated his office, the swastika flag was never hoisted on his house in Kronberg; this, too was a sign of special courage, since the house is a landmark. Today it is a clubhouse for American generals. He avoided communal receptions. He openly showed and expressed his aversion. Whenever donations were required he paid the minimum. He kept to this minimum even at the cost of a violent clash. He was not requested to appear at important economic political meetings because the Party did not consider him reliable. The Party never trusted him and certain other members of the Vorstand, so that it even intended to have a loyal Party member appointed to the Vorstand of Farben. It was mainly due to ter Meer that this was prevented. He himself was supposed to be removed from the Vorstand later on.

On the occasion of the expansion of the Vorstand of a railroad-car factory of which he was an Aufsichtsrat member, he appointed three non-Party members as members of the Vorstand and rejected a Party member.

This is the picture of Fritz ter Meer. These are not mere figures of speech I am using. Every sentence, every word is backed by affidavits or testimony of a witness under oath. Do you believe, your Honors, that such a man, and he is a man, made a covenant with the Nazis? Can one believe that in the Summer of 1939 or at any other time he expected a war? He went to Karlsbad in August 1939. He did not bring his almost 80-year-old mother from the Lower Rhine to Bavaria, to get her out of the zone of danger. He did not call back in time from abroad his only child left out of three. He did not suggest a sudden recall of chemists and fitters who were assembling a dye factory in England in August 1939. He intended to go to the USA in the Fall of 1939 with his colleagues and had already booked passage.

Can one assume that ter Meer wanted a war? He, the technical expert who knew that in a war, technical capacity would decide, he who knew the economic power of the United States from his own experience, he who had the courage, as I told you before, to throw this in the faces of officers at the Army Ordnance Office like a dash of cold water.

On 15 September 1943 ter Meer went to Italy. He went there with a feeling of relief. He had to endure too many conflicts in Germany, particularly because of the continuous interference of state and Party agencies with the economy, which he wanted to be a free one. He was freer in Italy than in Germany. There he could easier act as he wanted to, and did. He prevented the removal of machines and raw materials from Italy. He prevented the

intended shutting down of factories. He was in open conflict with German Wehrmacht agencies when they wanted to destroy large factories like power stations. Ter Meer opposed that and thus protected the whole Italian industry. He procured fertilizer for the agriculture in order to secure the supply of the civilian population. The Security Police in Milan called him "a lax civilian" and watched him. He prevented deportations of labor to Germany by declaring individual factories protected plants, and in other cases warned the workers in time so that they could escape into the mountains. If Northern Italian industry escaped wanton destruction, this is the exclusive merit of ter Meer. These, too, are facts proved explicitly by affidavits of Italians. Typical is the testimony of the witness Weber: ".....when he took over his position in Italy he had only a small suitcase and traveled just as lightly when he left." Can you expect that such a man looted in other countries? Can one believe he was guilty of enslavement of other men? No, your Honors, if you judge this man justly -- and I have this firm belief in you -- then you can pronounce but one verdict

NOT GUILTY;

THE PRESIDENT: Dr. Dix, it is ten minutes before lunch time, and you may use your own pleasure as to whether you start now or have us recess and start immediately after lunch. Which do you prefer?

DR. DIX: I would be grateful to your Honors if we could start after lunch.

THE PRESIDENT: We will recess until one-thirty.

(The Tribunal adjourned until 1330 hours, 4 June 1948.)



AFTERNOON SESSION

(The hearing reconvened at 1330 hours, 4 June)

THE MARSHAL: Tribunal VI is again in session.

THE PRESIDENT: You may proceed, Dr. Dix.

DR. DIX: Your Honors, As I already declared in my Opening Statement, I am entrusted within the frame of the total defense, with dealing with the legal problems of compulsory foreign labor in Germany. Six of my Document Books also served this purpose. With these I intended to show the legal evolution of labor service in Europe in the course of this century, its development by the German Government in the last war, and certain problems which are of importance in judging the responsibility of German private economy, in particular of the individual industrialist. 50 years ago, under the predominance of intellectual liberalism in the sphere of law and economics, forced labor and labor service were as good as unknown in Europe. The technical and economic necessities of the two great wars, the influence of political dogmas of the most diverse sources, and finally considerations with regard to the hard working levels of the population have brought about a great change in this respect.

Already in the 1st World War Germany was not the only state which introduced labor service, in order to make allowance for the demands of the large scale technical war and for the wishes of large circles of the population. But even after peace had returned, one did not return to the liberal conceptions of former times. The conviction that everyone could dispose of his working capacity according to his requirements and desires had been shaken. In 1926 many European and a number of non-European states concluded the Anti-Slavery Agreement, which I have submitted.

Primarily this was meant for the suppression of the slave trade and slavery, i.e. of the right to own a human being. But at the same time and by way of contrast, it permitted under certain conditions, labor service and forced labor, namely for public purposes, as is shown by the wording of Art. 5, Subsec. 1 and 2 of the Agreement, even without a compensation and including a change of residence. The word "Zwangsarbeit" was already at that time translated in the English version as "compulsory or forced labor", and thereby differentiated in the legal language from slavery or "Slave labor." The United States entered into this agreement only with a reservation. To be exact, they did not accept the above mentioned Subsec. 1 of Art. 5 about forced labor in the public interest, and thereby abided by their traditional conception of the freedom of the individual. However, this makes it all the more distinct that the legal evolution in Europe did not take a different course in the authoritarian states alone. Not only Germany and Russia reintroduced, as I have proved, obligatory labor service before the last war. In France, too, just like in Germany, certain groups of foreigners living within the commonwealth could even be drafted to compulsory labor service. In Europe, where a foreigner still had unusually remained free during the first World War, due to his geographically closer ties to his home state, from such strong personal obligations in his host country, this was considered a hardship. Nevertheless, this conception prevailed. Even Sweden, for instance, which abided so faithfully by constitutional means and liberal thought, in 1939, after the war broke out, introduced in principle compulsory labor service for foreigners living in Sweden too. Thus, compulsory labor has to a large extent become a fact in Europe during the given now, after the 2nd World War. I only wish to

remind of the terms imposed on Germany in 1945, and of the detention of many of its prisoners of war up to the present, 3 years after the cessation of hostilities. Even a few decades ago one would have deemed such a development impossible, and even now it is considered by many a great hardship.

But there can be no doubt that this development may not be left out of consideration, either objectively or subjectively, when judging the problems of labor service and forced labor in this case. To be sure, here it is not a question of a compulsory labor service which a state has introduced of its own initiative within the boundaries of its state, but of the enactment of such in countries occupied or otherwise influenced by a foreign power. For this, the International Military Tribunal found Sauckel guilty, and sentenced him for war crimes and crimes against humanity on account of the National Socialist program of compulsory labor for foreigners.

Now the Prosecution also designates an automatic consequence of the effects of this program as a war crime and a crime against humanity, punishable by international law, and therefore accused a number of former leaders of the German economy, among them in this hall those of Farben, because they had to employ foreign forced labor in their works. In this connection, the Prosecution repeatedly designated it as irrelevant whether the persons in question rendered themselves personally guilty of an act of inhumanity through such employment. It sees the crime solely in connection with this program and in the employment of forced labor, and supports its view point above all by the verdict of the International Military Tribunal and the Hague Rules of Land Warfare.

But it must be considered that the IMT has dealt with the program of forced labor as a whole with all its terrifying concomitants, in particular as regards the recruiting



of the persons liable for service, and has sentenced the man, who in this respect primarily had the political responsibility. However, it did not investigate the problem of the extent of the guilt of those persons who as members of the German military and administrative apparatus, were automatically bound to execute this program, or who as Betriebsfuhrer, had to employ these involuntary workers. Millions of them, for that reason, are at liberty, unless they personally had committed some outrage, and are following their professions again - some of them in responsible positions. I refer only to some of the witnesses heard in this hall. The Hague Rules of Land Warfare of 1907, on which the Prosecution bases its claim originates, however, from a period when, as outlined above, compulsory labor was as well as unknown in our civilization, and mankind had not yet experienced the consequences of a large scale technical war. The creators of the Hague Rules of Land Warfare therefore surely did not even think of the legal problems deriving from that. These rules alone, therefore cannot be taken as a basis from which to solve them. In the 1st World War, however, the German government and military authorities removed working forces from occupied Belgium, and employed them in the German industry. The German authorities gave as a reason for these measures that they were necessary for fighting unemployment, and thus were necessitated by Art. 43 of the Hague Rules of Land Warfare for the sake of maintaining public order. Upon request of the Allies, General-Fieldmarshal von Hindenburg, as one of the principal responsible for these deportations, was accused of a war crime after the war. The German Supreme Court squashed the proceedings against him in 1925, because those measures were permissible according to Art. 43 and 52 of the Hague Rules of Land Warfare. In the same year, Hindenburg,

without protest from abroad, became President of the German Reich, and in other respects, as I have proven in my Final Brief, the German viewpoint in this Belgian question also met the full approval even of jurists of former enemy countries. A commission of the German Reichstag under the chairmanship of the democratic and pacifist Professor Schuocking, the internationally renowned German expert on international law, who was also a member of the Hague International Court, came in 1926 to the same conclusion by majority decision as the German Supreme Court did. It pointed out especially that the unemployment in Belgium during World War I was caused by the English blockade of the German sphere of power, and that this blockade, according to the opinion prevailing with the majority of nations at the beginning of the war, was not in agreement with international law. The Commission furthermore suggested a new regulation of these questions giving the greatest possible scope to humanitarian considerations. However, this was not done, and so they became acute again in the last war.

With regard to the great variety of its modalities and problems a short review of this development is also necessary, at any rate with regard to the subjective guilt or innocence of German industry, and thereby also of these defendants.

The only country, in which the German Government in the first years of the war enacted compulsory labor service, was Poland. The latter, after the destruction of its fighting forces, was in its entirety occupied by Germany and Russia in 1939. Thus the two governments, by reason of the theory of *Debellatio* or *Subjugatio*, maintained the view that the sovereignty of Poland did no longer exist and governmental powers in this country had become vested in the occupation powers. On this reasoning they based their measures, thus for instance, the introduction of compulsory labor service by

Germany in 1939. The United Nations, in regard to Germany and its new compulsory labor laws in existence since 1945, took a similar, even if slightly modified point of view.

If the IMT asserts that for the duration of the war Polish forces were still in existence for the reconquest of the country, it must be considered that they had to be organized first, in the course of time, from Poles living abroad, and that at any rate the German population heard of them only very late on account of news censorship. The individual German citizen therefore could not be expected to ponder this. Obviously the present occupation forces in Germany also share this view point to a great extent. Thus, many German officials of the former occupation authorities in Poland are again employed in official positions. I mention only the case of the present Ministerpraesident of Lower Saxony, Kopf, known through the press, who was employed in the Haupttreuhandstelle Ost (Main Trustee Office East), i.e. engaged in the liquidation of Polish national property. Then, however, the German business man who employed forced Polish labor cannot be punished either.

With the exception of Poland, the German Government during the last war up to 1942 introduced only foreigners, recruited on a voluntary application, into the internal economy as working forces, and in this it was undoubtedly favored by the difficulties caused by the blockade as well as by other conditions. However, with the war situation becoming increasingly acute for Germany, and as the steadily growing demands upon the German population for service within the armed forces, increased



the voluntary foreign working forces did not satisfy the demand any more. In the winter of 1941/42 the responsible men of the National-Socialist regime therefore decided to use compulsion in procuring the necessary foreign labor. The measures required for this operation as the documents of Prosecution and Defense show, came into effect in the course of the year 1942.

Thus, as testified by the witness Stothfang, the first transports of involuntary labor forces from the East arrived in Germany at the beginning of 1942. In this respect the German Government was of the opinion that in its relations to Soviet Russia the Hague Rules of Land Warfare did not apply, because they were denounced by the USSR, and neither did the latter abide by them. As a matter of fact the Soviet Union, demanded compulsory labor by everyone within their sphere of power as shown by the Schneider Documents outside the national boundary lines as well, on the basis of their state-socialistic ideology. Beyond this, the German authorities to a large extent were of the opinion that the re-allocation of Russian labor forces to Germany proper was necessary to maintain public order, and was therefore justified according to the Hague Rules of Land Warfare, and also because of the extensive unemployment, caused by the Russians, by dismantling and removing the machinery equipment of the economy, as well as because of the well-known Partisan danger. Finally when withdrawing its troops, the German Government, considered a removal of the people fit for military service necessary and justified, in order to prevent their subsequent conscription into the Russian Army. Great Britain, too, to give an example, interned in England the Germans fit for military service in the two world wars, taking them f.i. right from board of neutral ships.

The reference to these complicated problems resulting from the German forced labor program in Russia shows that for a German subject it was impossible to argue about these things with his government in war time, let alone, to oppose it. In this connection, the fact must not be ignored that quite a number of Germans knew of the partisan danger and the difficult

economic conditions in the occupied territories of the Soviet Union. Often, they knew also from their own experience that, for instance, the International Red Cross privileges were not applied to German prisoners of war in Russia, so that in this respect the customary international usages were not observed. However, the abuses occurring in the conscription and collection of the labor force in Russia, as were condemned by the IRT, were, as results from the testimony of Stothfang, known in Germany only as rumours, which could hardly be verified, and even caused some humanely thinking German officials to grant to these wretched people outside the operational and occupational areas better living conditions, which they in fact enjoyed in the German industry as a rule, even according to the Prosecution documents.

In as far as the German occupation authorities introduced, after 1942, in the other parts of Europe compulsory labor for the inhabitants, with deportation to Germany, the above-mentioned considerations concerning unemployment, partisan danger, securing in case of withdrawal those inhabitants who were fit for military service, played their part in the decision, also from consideration of public order according to articles 43 of the Hague Convention. In this respect, too, the private business man, who ignored the real state of affairs and the official documents, could not possibly argue with his government about whether or not these measures were justified, declared, 10 years after the first world war, its inability to gain a clear picture of the real conditions prevailing in 1917.

Apart from that, labor from a large part of Europe was made available to Germany on the basis of treaties and agreements with the governments of the countries concerned. Probably most of these foreigners came voluntarily. But even, in as far as they had been forced by their governments, a German private individual had no right to examine that question. The same thing applies also to those cases in which the governments concerned were forced by Germany to conscript and deport workers. For international law and its theory ignore, as is shown by my documents and as the Germans themselves experienced in the course of

the past 30 years, the exception of duress. Finally, if the Prosecution explains that those European governments had been illegal and only puppet governments this too is correct. For, at Vichy and in various Balkan states, diplomats of the neutral states and even of the United Nations were still accredited for a long time during the war, which amounts to a recognition of the governments in question as legitimate ones within the meaning of international law.

But it is necessary to add the following fundamental statements: As already mentioned, the Hague Convention relating to land Warfare has evolved under legal, military and economic conditions completely different from those prevailing in our times. The modern blockade was not yet known and the questions whether or not it was admissible according to international law was at the beginning of the First World War to say the least, contentious in many countries of the world, so in the United States. The same applies accordingly to the modern war in the air and its terrible effects, which are incompatible with the meaning and wording of article 25 of the Hague Convention about the protection of unprotected buildings, likewise residential buildings. Likewise not one of the belligerent states observed, according to the opinion of the IMT in the case of Raeder, in the submarine war, the 1936 agreement during the years of 1939-1945. But all these potent weapons of the technical war at sea and in the air with their far-reaching and drastic effects upon production, supply and the whole existence of the civilian population, were only weapons of the modern total economic war, a struggle, not only of the military forces, but of the nations, the significance of which was recognized above all by the Anglo-Saxon doctrine of international law. It turned the working potential into one of the fundamental problems of warfare and became, out of military necessity, doubtlessly one of the chief reasons for the forced



labor program of the nazis. Military necessity and its importance with regard to international law, however, are also recognized in the preamble to article 25 of the Hague Convention. And by this, the continuous evolution of International Law in regard to the modern air war is recognized. Thus, the IMT says quite correctly, the following that I am again quoting briefly:

"The laws of war are derived not only from conventions, but from the usages, and customs of the states which have found more and more general recognition; as well as from general principles of law, which were worked out by jurists and are applied by Military Tribunals. These laws are not rigid, but follow the needs of a changing world by adapting themselves continuously."

May this not apply also to the interpretation of other articles of the Hague Convention, to which the Prosecution refers?

According to its motives, article 52 has been evolved out of the ideas and needs of the 19th century, previous to the developments of the large scale technical war and makes as little allowance for its necessities as article 25 concerning the protection of undefended residential premises does for the modern air war. Article 46, however, does, according to its wording, not even protect liberty and right of abode of the population. In view of the military importance of the working potential and compulsory labor to work in the modern large-scale war, no unconditional ban on forced labor may be derived from it. This was also, as I have proved also the opinion after the First World War, of leading German and foreign jurists. This brings the contradictory nature of the forced labor program and its evaluation by the individual citizen into the open.

On the other hand, the opinion that Germany is not entitled to take advantage of all these arguments, because she is the aggressor, is refuted by the consideration that there could have been no distinction between the various obligations and rights of the belligerents during the war.

This was, in fact, recognized by these tribunals, e.g. in Case 17, as quoted in my Closing Brief. A different attitude would, as a matter of fact, mean the end of international law, since in a war each party is in the habit of calling itself the attacked one.

But apart from the above discussed contradictory nature of the issues relating to international law, there were other reasons and considerations which made any opposition against the National Socialist labor program during the war absolutely impossible or nipped it in the bud.

In any case, no one in Germany or the neighboring countries saw at that time any connection between these measures and slavery or slave work with all its international difamation. Compulsory labor by order of the state had become a general phenomenon and even those who rejected that obligation and the regime as a whole, did not put it at an equal footing with slavery, which changes a human being from a subject to an object of the property laws. The direction of labor forces and the reasons

as well as the conclusion, the contents and the dissolution of a labor contract, was in Germany, a matter for the state. The regulations fixing the working and living conditions of all workers, including the foreign compulsory ones, made, however, their existence uniform and by no means unworthy of human beings. Decent treatment was obligatory and ill-treatment prohibited. Thus, in this respect, too, the industry was in no position to make fundamental objections. In as far as the conditions were temporarily different, especially with regard to the Eastern workers, they successfully tried to get them changed. For, within the framework of the planned economy, not only wages and working conditions, but also food supply, constructions and nearly every kind of consumption were regulated by the state up to the last detail.

My documents, which prove all this, also show that even the recruitment of voluntary foreign workers was controlled by the authorities a long time before the war. The official direction of the labor requirements was, from the beginning of the war, served also by current, specified reports about the strength of personnel from the heads of the enterprises (Betriebsfuehrer) and detailed investigations by the authorities when the plants wanted to engage workers, to use an application form, which was regarded according to its wording, at the same time as an application for a possible allocation of foreigners.

A great number of decrees prohibited, as a matter of principle, any discriminatory treatment of foreigners, but also their preferential treatment, which shows that industry, because of its great shortage of labor, was inclined to favor the newly engaged foreigners in comparison with its old cadres of German workers. The graphs and charts submitted by me and other Defense counsel prove that the German food rations, which were nearly identical for both German and foreigners were quite adequate in principle and throughout higher than those in force in Germany since the end of the war, and nobody who has observed the state of affairs without bias will have any doubt



that the state of nutrition of those foreign workers was better than that of a great part of the German population at the present time, especially in the industrial areas.

The same applies to the regulation for accommodation and to the way they were carried out, which throughout created living condition not unworthy of human beings. May I only refer to the pictures presented and to the fact that, apart from day-rooms, sanitary installations, and other things, there was, even in 1942, a regulation in force, fixing a minimum living space of 7 cubic meters for each person in the sleeping quarters. No doubt, the bombing attacks had partly a very adverse effect on that regulation. But this affected the German population to the same degree. With regard to the efforts of individual plants, as well as of the German Labor Front, to offer the foreigners a number of amonities also in their leisure hours by sports, theatre, and similar things, I refer to the documents submitted.

All this applies to the voluntary and involuntary workers from most of the European countries. A certainly regrettable exception in that respect were, at times, the Poles and particularly the workers from the Soviet Union, the so-called Eastern workers. Their living conditions were made considerably less favorable by order of the German government, when their employment began at the beginning of 1942. With reference to the Bolshevistic danger a most rigorous supervision and severe discipline was ordered. A major part of the wages which had to be paid by the plant to the amounts customary in the other cases, went to the Reich. In quality the food rations were worse, this could be explained by a lower living standard in the East. But in spite of this, living conditions were bearable for the Eastern workers in German plants as shown by just the very documents which the Prosecuting authorities presented from secret documents of German authorities in Book 67.

Due to continued complaints, especially also by industry,

to the authorities in charge and to the highest quarters, conditions improved gradually more and more until conditions of the Eastern workers corresponded on the whole to those of the other workers. Guard measures as well as permission to go out were eased very soon. The ill-famed barbed wire enclosure of the camps was also done away with at the same time. Special wage deductions gradually disappeared almost entirely and the rations of the Eastern workers were improved more and more. In this respect, as in general also, I point to my Closing Brief and to the evidence mentioned there.

Objections were made by the Prosecution especially in regard to police measures taken against the local and foreign workers in the interest of the production potential. Reference is made in this case especially to the reporting and the return of workers who had fled or did not return from their furlough and were then transferred to a correction or concentration camp, as the case maybe. It follows from documents presented by me, that in this respect higher agencies and officials of the regime demanded again and again in the most severe manner, by threat of punishment to plant managers and other competent authorities, that such workers be reported in the interest of armament production after war conditions became worse in 1942. There was practically no possibility of circumventing this order as has already been described here repeatedly.

In the thoroughly organized administrative machinery of Germany those particular foreigners were reported to the Police and Labor Offices, and besides they were also registered on account of their food rations and other allotments, at the Food and Economy Offices. In addition, almost everywhere they had to be reported there each month again for control purposes. The correctness of these reports was subject to heavy penalties, and those to the Labor Office even carried the death penalty for incorrectness according to the law for the security of the armament industry of March 1942. Here and there fanatic adherents of the regime

participated in all of these events. Added to this was the increased danger of sabotage, espionage and Partisan activity due to the increased escapes, with all the consequences for the general public, the plant and its management, even though the German authorities did not publicly pay very much attention to it in order not to alarm the population. This was already quite apprehensive on account of the foreigners. For all of these reasons it was quite impossible to conceal from the authorities that foreigners were missing for any length of time and to neglect to make the reports as ordered. Consideration must also be paid to the fact that, according to the documents submitted by me, tens of thousands of escaped foreigners were sent to the concentration camp plants by the SS every month for the duration at least this happened in the last years of the war. But an escaped worker who was reported by a German plant according to regulations and on a report form had the chance of being released immediately after being caught or after serving a short term and then being allocated again to the plant, where one was naturally considerably better off than in a concentration camp. The Court of Appeal in Frankfurt has, as I have proven, also legally and without objections by Military Government, rendered the decision that the passing on of such reports, which was impossible to avoid, is no crime against humanity. But I refer thereby to the question of the responsibility of German industry and especially that of the individual industrialist, for the consequences of the National Socialist forced labor program in themselves. The anti-slave labor agreement already mentioned by Professor Wahl in Paragraph 5 Section 3 made the central authorities of a country responsible for the use of forced labor and for compulsory labor service. This corresponds also to the principles of constitutional and international law. This defines in principle only the rights and duties between States. The normal citizen, i.e. the civil servant and the soldier, as well as the private citizen, have to obey their State alone. This is the so-called primacy of State Law before International



Law prevalent on the European continent and which is not alien to Anglo Saxon jurisprudence. British, and even American court practice, as shown by me in an important instance, follows the law of their countries even when they cannot be brought into accord with International Law. For British courts decisions of the executive branch are binding in International Law, hence the decision rendered a short while ago *exparte Kuecheumeister*<sup>1</sup>, by the British government, according to which there is still a state of war existing between Germany and England. It is also perfectly clear without any doubt that such far-reaching measures and decisions have to be reached in a uniform manner and that the responsibility for them had to be restricted to the political authorities. The principle also found its expression in the proceedings before the IMT, as in the statements made by the French prosecutor and in the verdict itself. It may be pointed out that Bormann Sauckel and Speer, despite the fact that they held leading positions were found not guilty under Counts I and II of the Indictment - Preparation and Conduct of an Aggressive war, and others were acquitted despite their close associations with the National Socialist policy. Even Schirach, who as a Gauleiter was responsible for all questions of labor allocation in his Gau from April 1942 on, according to Sauckels orders, was nevertheless not sentenced for war crimes on Count III of the Indictment, according to the opinion of the IMT, in regard to the employment of foreign deported workers, but for other reasons, namely for crimes against humanity under to Count IV of the Indictment.

But while public opinion of the whole world demanded conviction of the leading men of the National Socialist regime and they themselves to a large measure also expected this, as the sentence in the justice case based on the *ex Post facto* principle discusses, it is an entirely different matter with the private business man and his connection with the National Socialist forced labor program. As I

---

1. Monthly for German Law 1947, Page 179.

have already stressed in my Opening Plea, millions of industrialists, tradesmen and farmers in German, as well as neutral foreigners residing here, have employed foreign forced laborers and were forced to do so. The multitude of illiterates - if I may call them so - among them, had, even if they sometimes were sorry for those workers, no scruples at all in view of the compulsory labor service which applied in equal measure to native and foreign labor. But leading business men, including those of neutral concerns in German, despite of their scruples had no possibility of opposing this government program. For this purpose they did not have the necessary legal and political power and they had an insufficient knowledge of conditions to enable them to judge the manifold and - as I believe to have proved most conclusively - most complicated legal problems. In any case, no plant manager and farmer has ever thought that he was committing a crime if he treated decently the foreign laborers, who had been allocated to him within the framework of the forced labor program. Such an attitude is even today still prevalent, with the assent of the occupying powers, as the enforcement of the denazification shows. For millions of people, who employed forced labor some even in leading positions at the firm are at liberty and, partly even active in responsible positions again. But then it is contrary to the principle of justice and the uniform application of legal principles, demanded in the IMT, to sentence as war criminals individual industrialists who are in the same position. All this brings us to the conclusion that for the National Socialist forced labor program in foreign countries, only the political leaders are principally responsible under International and Penal Law, while the private industrialist and farmer can only be punished if he made himself personally liable to punishment by committing a special war crime or crime against humanity within his sphere of responsibility. This conclusion was also reached in the judgment of the Flick case, substantiated by the fact that the individual industrialist was unable

to evade this government program and that he found himself in this respect under duress. In that trial, and also before this court numerous witnesses from the most different sources and with different attitudes have testified that the refusal in itself to employ allocated foreign workers would probably have brought on the most serious consequences. This is already obvious to anyone who was acquainted with the methods of the National Socialist regime and must be especially valid if the refusal to do so came from a large enterprise which was important to war production and in need of many workers. For in such a case a refusal to employ foreigners meant that the plant, could not fill its important war production quotas, since generally German workers were not sufficiently available either. And this certainly would have been reported to one of the chief government officials under such circumstances, who then would have been even more angered by such an action because the regime unwillingly and under the pressure of war condition for propaganda reasons, only very reluctantly, decided to take these compulsory measures in most of the countries, and naturally was very much aware of the disadvantages - primarily the growing embitterment in the respective countries - just as shown by many of the Prosecution documents of Volume 67. But after the men in leading government positions had overruled all those important political considerations for military reasons, they would have reacted just that much more violently, in keeping with their nature, to such a rebuff from private industry.

A refusal to employ foreign labor was, in addition, quite impossible, especially in industry, for the following reasons:

Industrial production had been administered since the beginning of the war by government orders. When the war situation became acute around the turn of the year 1941/42, which is under consideration here, the entire German economy under the leadership of the competent Ministries became subject to a system of Headquarters Staffs which, as shown already by the text of its directives and orders submitted by me managed private



industry in an absolutely military manner too.

The Betriebsfuehrer (plant leader) had to comply with these decrees and orders in all questions of production and working potential and any failure to do so and serious act of opposition was, as various witnesses testified, subject to the severest penalties. If under those circumstances a Betriebsfuehrer had not obeyed his orders because he had refused the foreign workers assigned to him and thereby necessarily had incurred a shortage of men, then in all probability according to law he would possibly have been punished with death for treason and for giving aid and comfort to the enemy, if he had not already lost his freedom and position for these reasons before. I might only recall that according to the documents submitted by me in Vol. VI even the old Reich Imperial Military Tribunal in the First World War had treated similar occurrences involving the war economy at that time, such as strikes, usury and the destruction of harvests, as treason and giving aid and comfort to the enemy, and I also believe that such a view is not foreign to Anglo-Saxon legal thought, either. The life and freedom of anyone who so placed himself in opposition to the regime in such fundamental questions, were therefore directly threatened by the police and criminal justice. Examples of a similar kind could be mentioned, in connection with which one must bear in mind that the actions of the Gestapo and the judgments of the high political non-military courts of National Socialist Germany were secret and only became known by chance. To this must be added the fact that in view of the general state of affairs and the legal situation, which I described at the beginning of my Final Plea, hardly anybody saw any possibility of offering successful resistance, so that in plants which were of importance to the war effort, at least, nobody probably ever went so far as to refuse to obey such an order. However, this does not alter the fact of the direct threat to any opposition. It is the nature of such a general coercion exerted by the State, now frequently called collective coercion.

that in the individual case it cannot be proved that there is any threat against the individual, because it is omnipresent. This nature of collective coercion as a paramount factor has also been recognized by the American Military Government. Thus its law on the return of property belonging to persons who have been racially and politically persecuted in Germany also envisages such coercion in cases where the injured parties like most, disposed of such property solely under the impression of racial and political propaganda without any really direct threat to their persons.

The assumption, especially common abroad, that the wealth and power of German private industry would have provided the possibility of opposition in questions of a fundamental nature fails to recognize the nature of National Socialism and has been refuted by the evidence submitted during this trial. The testimony of men in such high authority as the witnesses Lammers and Kaestl and the documents submitted by the Defense on the control of German industry under the National Socialist regime show that even before the beginning of the war, and much more so afterwards, the position of the capitalist was so and by the terror of the Party and the Gestapo that his position became similar to that of a civil servant. As against the holders of political power wealth and income meant very little in National Socialist Germany, indeed even a special danger. In the document submitted by me in Volume VII, Professor Roepke speaks private industry. When fundamental questions of National Socialism were concerned even great special abilities did not protect one from threats and the loss of one's livelihood, as is shown by the fate of Jewish and non-Jewish Nobel Prize winners described by the witness Kaeding. The circumstance that it was once possible to help out or prevent harsh measures in individual cases does not alter the fact that during the war years, at any event, an opposition to the holders of power in the Na-

tional Socialist regime in fundamental questions was, practically speaking, not possible. Thus, indeed, even the International Military Tribunal states:

"Hostile criticism, indeed any criticism of any kind, was forbidden and the heaviest penalties were imposed on those who were active in this way. Any independent judgment, based on freedom of thought, thereby became a complete impossibility." (x)

Thus the industrialist was left with no other course than to obey if he did not want to expose to the greatest danger the livelihood or the lives of himself, his family and possibly his employees. But as can be seen from the judgment in the Flick case, one could not and cannot legally demand this from a private business man or industrialist. The same conclusion is reached in the actual practice of denazification and in the wise reasoning of the moral theologian, Father Pribilla, in the expert opinion I requested of him. In view of the highly organized methods of terrorism practised by the Nazi regime, any successful resistance was hopeless, even in the case of the armed forces as the 20 July incident proved. But to sacrifice oneself would have been to no avail, for a successor of the victim drawn from the ranks of active National Socialists would have met the requirements of the government and employed the forced workers, quite apart from the fact that they would probably have been worse off under his management than under the old one.

As the Flick judgment emphasizes, the rule of the Control Council Law on the significance of orders is likewise not opposed to the confirmation of necessity as a legal excuse, for here it is not a question of an order to commit an individual crime, which does not exonerate the hesitating criminal in German law either, but rather of an entire system of legal, moral and factual necessities, against which the average citizen was power-

---

(x) - Page 12 of the official English edition of 1947.



less and not in a position to make a choice in the sense of the moral law, according to the words of the IMT which were once quoted here by me. Father Pribilla's expert opinion confirms this legal state of necessity even under the moral aspects of the doctrines of theology and philosophy. In this connection Father Pribilla justly emphasizes that precisely in Germany, even from the ethical point of view, it was especially difficult to justify any resistance to the power of the State, because for about 3 centuries an authoritarian state government was supported here to a particular degree by the ecclesiastical and philosophical party. The historical reasons for this are to be found both in Germany's perilous geopolitical situation and in its special ecclesiastical development. For the princes and sovereigns who were the adherents of Lutheran and who aided it to victory became the *summus episcopus*, that is to say the supreme head of their national church, and in the Peace of Westphalia by the maxim, "*quius regio eius religio*", the European powers constituted the German sovereigns lords of their territory in matters of faith as well. The exclusion of tensions, even of political tensions, implied in this, made possible that tranquillity, order and discipline, within the individual states which enabled great things to be accomplished and probably also conditioned the character and brilliance of the period of classic German culture. Then as a result of this attitude the well-known constitutional law scholar Wolwendorff legally denied the right of any resistance to the power of the State in his work published in 1916, excerpts of which were quoted by me in Book VII - probably the latest authoritative German publication in this field. Thus during the last decade in Germany this once famous, although to be sure always problematical, *ius resistendi* had become almost unknown to the practical lawyer and the educated man in general, a circumstance which certainly favored the tragic developments of the last decade. It provides an example for the word of a famous Frenchman that the greatest

virtues of a system are its greatest vices. At the same time this teaches one not to forget the sunny side in the darkest hour.

In this connection, however, other old and weighty opinions outside of Germany might be mentioned with reference to such a right of resistance on the part of individuals - in accordance with the maxim "Quod universitas debet, singuli non debent" - what is owed by the whole is not owed by individuals", that of a nation or a majority is subject to other criteria again and is without any significance for the problem of guilt in criminal law, that is, individual guilt. According to the document in book VII which I have just mentioned, Marsilius of Padua speaking for the Catholic doctrine of the Middle Ages, as well as Calvin in his Institutes, emphasize that resistance against the power of the State is permissible only to the *statutes ad hoc* or the *magistratus*, that is to say, those who have been especially charged with public and legal authority. Grotius, however forbids the private individual to rebel in any way against the holder and even the usurper of the supreme power;<sup>x)</sup> The special responsibility of the men at the head of the State and the duty of obedience of the citizen and private individual as against even the unjust exercise of the power of the State is, therefore, an old legal principle which is also followed by the Flick judgment in its conclusion and not a hypothesis erected for the purpose of this trial.

I hereby conclude my basic treatment of the forced labor question and turn to the question of a personal responsibility on Dr. Schneider's part.

The Indictment is also directed against him under Count 1 for the preparation and waging of a war of aggression.

In this respect I refer to the main points in the statements of my colleagues from the Defense, and to my closing brief.

---

(x) - Hugo Grotius: "De iure belli ac pacis", Leyden, by Brill 1939, page 161 XIX and page 163 XX.

I skip the balance of this page, which is repetitious, and also skip the first paragraph of the following page.

The Prosecution is of the opinion that the production of Farben must have given to its leading men a special knowledge of Hitler's intentions of aggression. This charge is opposed in each case by those gentlemen who were mainly responsible for the respective branches of production of Farben. Since Schneider was head of Sparte I since 1938, and already the leader of its largest plant before this time, and as he had handled part of its tasks for Krauch since 1936, I shall discuss these affairs briefly insofar as they were connected with the production of Sparte I. As Schneider explained during his examination, this production, especially in the field of nitrogen, mineral oil and methanol was, of course, important in the case of war. But it is incorrect that the development of this production until 1939 did not result from peace time requirements, above all from home consumption and export in connection with the foreign exchange situation, the employment program and the regular re-armament, and must have induced and did induce Schneider to infer the German government's intentions of aggression from this.

The diagram in table 1 of Schneider Exhibit 13 in his Document Book VIII shows that the major part of Farben's nitrogen production for home consumption and export was used as a fertilizer in agriculture, and only a small part of technical nitrogen was used for military purposes. If, according to the documents of the Prosecution, the consumption of technical nitrogen, i.e., nitric acid, increased in 1937 for a short period. Schneider Exhibit 14 shows an immediate set back for 1938, so that in this regard, too, there was no reason for special political conjectures.

According to the diagram attached to Schneider Exhibit No. 16, only



a very insignificant part of the pre-war methanol production was used for military purposes, i.e., the explosives Hexogen and Nitropenta. But this was unknown to Schneider, since Leuna delivered the methanol to plants of Sparte II for the manufacture of formaldehyde and only part of this was made available for the explosives industry. Only during the war was methanol used for toluol.

The questions pertaining to the production of mineral oil will primarily be dealt with by the counsel for the defense of Dr. Buotofisch. I shall comment here only briefly on the general trend of production before the war. As the diagram on table 2 of the afore mentioned Exhibit 13 shows, the increase in Farben production of synthetic fuel before the war was relatively small and the production in 1938 amounted to no more than 6% of Germany's total peacetime consumption. In consideration of Germany's motorization, which had remained far behind requirements but had been promoted, as set forth in Krauch Exhibit 4 in the latter's Document Book I, it can be seen that the production of synthetic fuel by Farben was completely justified by peacetime requirements and the economizing of foreign exchange, which was so necessary. This argument, which is conclusive on account of its very simplicity, proves that it was by no means possible to infer any aggressive intentions of the German government from the production of Sparte I. As far as the other branches of production of Farben are concerned, about which Dr. Schneider was only generally informed, my colleagues of the defense staff will comment on the respective evidence and they will arrive at the same result.

All this also applies to the plants which were erected by order and with the support or for the account of authorities and/ or the Wifo (Economic Research Company), for products of the kind of those of Sparte I, which in their peacetime quantities were necessary for defensive rearmament and are also not unknown in other countries, as the witness Diekmann

has confirmed. I should like to add that according to the documents submitted by me such a nitric acid plant was also erected in England in 1937, for instance, with the assistance of Farben, which speaks for itself. For details in this respect I refer to my Closing Brief. The question of piling up of reserves is likewise dealt with there. I should only like to emphasize that Farben, as was proved, did not stock up gasoline for the case of war and that the stockpiling which was known to Schneider was absolutely justified by peacetime requirements. The weakening of potential enemies of Germany by means of international agreements will be dealt with by my colleagues on the defense staff, on behalf of the gentlemen who were informed about this. I refer to this and to my Closing Brief, which also deals with the alleged remark "That is the war" made by Schneider at the beginning of the war and which is, in my opinion, so irrelevant. His powers as a member of the Vorstand, of the Central Committee, and of the Technical Committee, and as head of a Sparte, will also be dealt with basically by my colleagues, so that I think I might save repetitions in this respect. I shall comment subsequently on Schneider's position of Hauptbetriebsführer, (main plant leader).

After all this it cannot be said that Schneider did or could infer intentions of aggression of the German government from his knowledge of the production or the business policy of Farben. I may be allowed to stress, in this connection, that Funk, who was Reich Minister

of Economics after 1938 and therefore had a much better knowledge of Germany's industrial planning and preparation for the war, was acquitted by the IMT of the charge of preparation for a war of aggression. It shall not be omitted to mention here that the same applies to the knowledge held by high civil servants and officers who were interrogated in this trial as free witnesses, as applies to Funk. Finally, it must not be omitted that nobody in Germany, except perhaps the most intimate collaborators, would have been allowed to tell Hitler that he was planning a war of aggression. This was also confirmed by the witness Schmidt during his interrogation last autumn. How, then, could it have been done by the defendants whose plants mainly produced things which after the 1st World War had to be recognized by the victorious allied nations as being necessary for peace, as was confirmed by the witness Morgan.

The official positions which Schneider had to assume in his capacity as Hauptbetriebsfuhrer, or as head of the Leuna-Werk, likewise did not give him knowledge of the political intentions of the German government. The positions he held with central agencies in Berlin were of a purely social nature, the others were local ones and likewise gave no insight into the plans and measures of the high political leaders, in view of the centralistic character of the National Socialist regime. It was confirmed by the evidence produced that the appointment to Military Economy Leader (Wehrwirtschaftsfuhrer) was only nominal.

During the war Schneider was obliged to do his duty, as was any German. This also applies to his position of Chief Counter-Intelligence Officer which, for the rest, was more of an authoritative and supervisory, and not of an active nature, and which he took over most unwillingly, as is confirmed by an affidavit by Dickmann. Besides, even the documents of the Prosecution prove that Farben's attitude in this respect was rather passive.



An outright refusal was not possible and would have been inconceivable to everyone, as it is best shown by the fact that Schneider's appointment was effected by Admiral Canaris who had always been opposed to National Socialism for which he paid with his life. Apart from that, not only the passive counter-intelligence but also an active intelligence service is permitted by international law for which I was able to furnish proof also on the basis of American regulations. Schneider had to meet the demands of the government during the war in regard to these questions as well as those of production. This was the duty of every soldier or citizen. Furthermore, it was expressed in the judgment of the Justice-Case that all defendants for this reason had been found not guilty of promoting a war of aggression. Even men like Sauckel, Bormann and Speer have been acquitted on this count by the International Military Tribunal, as previously mentioned, which has confined the criminal responsibility in this respect to the supreme authorities responsible for the conduct of the war.

In view of the fact that the Prosecution, in its preliminary memorandum and in cross-examination, brings Schneider's above-mentioned position as Chief Security Officer into connection with Count IV of the Indictment, I shall now deal with this point. Schneider has been charged by the Prosecution on this count too, because he was a sponsoring member of the SS and it later on claimed that this membership was connected with his activity as counter-intelligence officer. In the meantime it was established by the judgment in Case 3 that sponsoring members could not be regarded as members of the criminal organizations. But the IMT had already acquitted the members of the counter-intelligence service, who in the same way as the counter-intelligence officers had been incorporated into the SD, of having belonged to these criminal organizations. For this connection was ordered by the authorities and therefore was compulsory, a connection

which the persons concerned attempted to evade as far as possible, as the evidence in this trial has also established in the case of Schneider.

Therefore the Prosecution's attitude is no longer conceivable. Schneider's appointment to Chief Security Officer, according to the results of the evidence, had nothing to do with his sponsoring membership and was affected in view of his position as general plant manager. It is also a known fact that the military counter-intelligence service was one of the few real political resistance groups in the Third Reich. I only mention the fate of Admiral Canaris and his staff and also that of the counter intelligence officer of Leuna, Dr. Schaumburg. Schneider's appointment to main plant leader, contrary to the allegations of the Prosecution, was not affected because of his sponsoring membership but for other reasons, especially because of his interests in social affairs. Actually Schneider had no connections with the SS other than making his contributions as a sponsor and, above all during the war, there was a constant tension and disagreement in his relationship with its most powerful organizations, the SD and the Gestapo. All this was established by the evidence. However, this is no longer of importance, since it has been established by the judgments of the IMT and the Justice-Case that Schneider did not belong to one of the criminal organizations, either as a sponsoring member or as counter-intelligence officer.

Schneider's personal field of work, according to his testimony, was not connected with the matters dealt with in Count II of the Indictment and in view of his own task he could not concern himself therewith. Such a decentralization of tasks is necessary in a large enterprise for the sake of the matter and it is absolutely admissible from the legal point of view. He was confident and had reason to be confident that these matters would be correctly dealt with by the highly qualified officials and experts of Farben who had been carefully

selected. An examination of these difficult legal and commercial problems was entirely beyond his technical assignment.

According to the principle of personal guilt, recognized by these Tribunals, and according to the corresponding interpretation of the Control Council Law, he cannot therefore be held responsible on these charges. To this effect I refer to the fundamental statements by my Assistant Defense Counsels in regard to the question of the responsibility of the Vorstand, and in particular to the final plea of Dr. von Metzler.

Count III of the Indictment, on the other hand, especially refers to Schneider in regard to the principal question of forced labor, above all in his capacity as Hauptbetriebsfuhrer (main plant leader) of Farben. After having dealt in detail with the fundamental part of this problem, I now like to describe primarily the position of Schneider as Hauptbetriebsfuhrer (main plant leader) or, as the law puts it, head of the Farben enterprise. Schneider, according to the Prosecution's point of view, was in so far responsible by setting the course for all questions of labor. As is demonstrated by the evidence submitted by the Prosecution as well as by the Defense, this is not correct according to the law. If in his affidavits which he generally did not formulate himself, Schneider has made similar statements which are evidently incorrect, it is because of the fact that he, as a non-jurist, after hours of nightly interrogations and owing to the lack of sufficient records, was in no position to describe the circumstances as they were. In regard to the particulars of these interrogations I refer to Schneider's testimony before the High Tribunal where he was given the opportunity to correct his errors.

According to the law for the regulation of national labor which is primarily decisive here, the local Betriebsfuhrer (plant leader), who was connected with the plant and familiar with its conditions, was in the first place responsible for questions concerning



the employees. Since this is the best basis for a responsibility, the regulation established by law can therefore be regarded as absolutely sound.

The industrialist, in other words the owner or the entrepreneur or, in the case of a legal person, the legal representative which is the Vorstand in the case of a corporation, were usually in charge of the plant. However, if he did not run the plant himself he had to appoint someone else as manager of the plant. The responsibility of the industrialist in such a case, which also is confirmed in the documents of the Prosecution, was only in an indirect form, for the selection of the Betriebsfuhrer and to decide whether he was to continue his assignment. Insofar I refer to the extracts from commentaries pertinent to the law for the regulation of national labor and to the affidavit by Mansfeld, the creator of said law, contained in volume 67 of the Indictment. If the enterprise was composed of several plants a leader of the enterprise could and, if necessary, had to be appointed. The latter, with reference to the so-called Senior Shop Stewart of the German Labor Front, was frequently called Hauptbetriebsfuhrer (main plant leader) which was also the case in Farben already prior to the appointment of Schneider. As a matter of principle, he was acting as the representative of the industrialist, consequently he was only indirectly responsible for the plants which he did not manage himself. The right of the Hauptbetriebsfuhrer to issue general directives, as mentioned by the Prosecution, was restricted, according to the wording and meaning of the law for the regulation of national labor and its implementation, to the social matters of the employees involving several plants, in as far as he had reserved this right for himself. Consequently, the Hauptbetriebsfuhrer himself defined his competency in this respect.

All this is the result of the documents submitted by me and the statements by the witness Weiss. Prior and during the time already

in which Schneider held this position it had become a practice in Farben that the Hauptbetriebsfuehrer issued directives insofar as the social policy by Farben was concerned, which for example included the building of apartment houses, special welfare contribution of the enterprise itself etc.

The Hauptbetriebsfuehrer (main plant leader) was only active as a coordinator in the social welfare policy of the State, as well as in social security, salary matters, with respect to working conditions and the allocation of labor, and in war time, for example, in matters concerning accommodation and feeding in the camps. This meant a certain coordination of the measures taken in the 50-odd Farben plants through an exchange of experiences, etc., which was accomplished at the meetings of the Beirat (Advisory Council) of the enterprise, of the Technical Committee, by the so-called conferences of the Betriebsfuehrer (plant leaders) as well as through the statistics of Bertram's Office and Schneider's trips to the individual plants. This practice of Farben is explained very easily as a necessary result of prevailing conditions, since general questions of the social welfare policy of the State were only decided by the central State authorities and regional and technical differences between the different plants were clarified and decided by the middle and lower agencies of the State, as for instance the Labor Offices. Whatever was left over in this sphere for Farben to decide was on a local and personal level and therefore could not be judged and decided by the main plant leader (Hauptbetriebsfuehrer), but only by the local plant leader (Betriebsfuehrer); this also corresponded with the meaning of the law and the traditional decentralized centralization of Farben. Insofar as he learned of abuses, Schneider could, and had to, intervene in individual instances, which he also did. Naturally, a Hauptbetriebsfuehrer had to have other tasks besides his social welfare activities, according to his leading position as defined by the law, and so Schneider was also a

member of the Vorstand and a committee member, as well as the head of a Sparte. This, however, did not change and increase his legal social responsibility over what he already had as an entrepreneur or a main plant leader (Hauptbetriebsfuhrer), because he was only a member of the Vorstand insofar as he represented the entrepreneur in a corporation and therefore was only indirectly responsible within the above described boundaries.

The selection of the Betriebsfuhrer (plant leader), which was so important and was always done carefully, was a task of the Vorstand in Farben, as it no doubt is in all large enterprises. For a Betriebsfuhrer has to be suited for the management of his plant according to the law not only from the view point of social welfare, but also from a human and technical point of view. I hope that I have shown here, through the evidence, the character as well as the limits of the authority held by Schneider as Hauptbetriebsfuhrer of Farben. For the details I refer you to my closing brief and the documents mentioned therein.

As the evidence presented by the Prosecution and the Defense has shown, Farben could not fill the official production quotas imposed upon it during the war on account of the steadily increasing conscription of German labor into the Wehrmacht, without obtaining such labor from other countries, although the employment of foreign workers by Farben caused many grave doubts for a variety of reasons. For this reason Farben participated voluntarily in the recruiting of the foreign workers, with the consent and under the control of the authorities and according to the existing regulations. As has already been described, since 1942 the German authorities had turned to large-scale conscription of foreign workers, as a result of the difficult war situation. It has not been proven that Farben employed conscripted foreign workers before 1942. This could only have involved Poles, and the documents presented by the Prosecution only prove that Poles were



allocated in large groups to Farben after 1940, through government agencies and under their control just as had been the case with voluntary Polish workers for other firms before the war.

The fact which is self-evident in the regulations and even obvious in the Prosecution documents, namely that the allocation and the working and living conditions of these Polish workers were decided and regulated by the authorities, does not prove that forced labor was involved. At any rate, Schneider did not know of this. Here it must not be forgotten that, as the witness Stothfang has testified, the use of compulsion was kept as secret as possible by the authorities and difficulties of language and of making oneself understood made it harder to find out about this in individual cases. It is also obvious, according to the documents, that no Farben employee connected with these matters went to Poland at that time.

During 1942, at the time when labor became increasingly scarce, Farben was also given compulsory workers. Since they, like most of the volunteers, came through official agencies, this only became known gradually. In consideration of the conditions described earlier, however, Farben, just like the entire German economy, saw no way of evading this practice of the government. The prescribed production quotas could not have been fulfilled otherwise, as is also shown by many of the Prosecution documents. Naturally, these questions were discussed by the accused Betriebsfuhrers. But when the Prosecution points to the absence of decisions made by the Vorstand or to like things, it forgets that one can only make decisions on things over which one may make decisions. But this was particularly not possible at that time on such basic questions as the allocation of workers.

Employees of Farben did not participate as members of the firm in the compulsory labor service and slave measures of the government.

They only served the authorities in an advisory capacity in order to ensure the practical allocation of the conscripted workers to

the correct plants according to their abilities. But this was not only for the benefit of the plant itself, but above all in the interest of the workers themselves. The Prosecution documents in book 67, in particular, show that the incorrect distribution and assignment of the workers from other countries was counted as one of the great deficiencies of the forced labor program. Therefore no one can be legally blamed, nor even morally blamed, for giving such advice. It is surely not wrong to make an effort to find a better solution for those affected by a system that in itself is to be condemned. Even the concentration camp inmates who administered the camps for the SS, and in doing this served for the benefit of their co-prisoners, are rightly given special recognition. I am only recalling Herr Kogon to mind, who wrote that well known book and often appeared here as an expert witness for the Prosecution. In my opinion the entire wealth of evidence presented has shown that Farben has made an effort, in the spirit of its great, well proven and authenticated tradition of social welfare, to make the living conditions of the foreign workers as favorable as possible. In this connection I refer especially to the affidavits made by foreigners which the Defense was able to furnish, although they could not, unlike the Prosecution, travel in foreign countries, and encountered there a great reserve due to the fear of a charge of collaboration. The long Weiss affidavit in my document book VIII shows that in 1943, the last year for which such information was available in reliable form and when a great many foreign workers were already employed by Farben, the disbursements for social welfare purposes had, while Schneider was in charge, more than tripled since the prewar days and amounted to 41 millions for living quarters alone.

As the witnesses have stated, Farben and especially Schneider, always and consistently endeavored to improve the conditions for the Eastern workers and they in these efforts I would only like to refer to the clear description of the senior foreman Peantek of how the appearance of the Eastern women workers became more and more similar to that of their Western women coworkers. Naturally, Farben was also powerless against the consequences of the bombing attacks, which hit Germans just as it did foreigners, and which the German government, in the early belief of its ostensible air superiority, did not prevent. Nevertheless, Schneider did everything here, according to the statements of witnesses, to alleviate the deficiencies, although the scarcity of all supplies made this very difficult.

I do not desire to burden this plea with the constant efforts of Farben for the improvement of the meals, quarters, granting of leaves and medical care of the foreign workers, as well as the use of their spare time for sports, amusements, theaters, etc. For these things I refer to the closing briefs which have been handed in by the Defense and the proof contained therein, which also describe the efforts to ameliorate the effects of the official regulations which had been issued for taking excessive leave and for other offenses by foreign workers. Children of families which had fled from the East were only employed during the last phase of the war in small numbers and according to the legal provisions. It happened for children from 12 years of age upward for light work with shortened working hours, just as it had always been possible in Germany, and surely also in other countries.

In this connection the favorable hygienic conditions prevailing in the chemical industry, especially in Farben, must not be forgotten. If there actually was a case that a somewhat younger child had been inadvertently employed in a plant of the large Farben enterprise



this cannot be ascribed in any case to the persons in charge and is certainly not a crime against humanity. It is also obvious that an enterprise like Farben has no interest of its own to employ children. This only happened in order to keep them from loitering on the streets and its harmful consequences. The evidence has shown that the plants of Farben, in spite of a shortage of space in all rooms and a shortage of equipment, have set up schools and kindergardens. In my Closing Brief I have given the reasons which caused Schneider in his affidavit to give too low a figure for the age of the children.

The employment of prisoners of war was effected by the Wehrmacht as it is shown in the documents of the Defense and the judgment in the Flick trial. According to the documents submitted by my colleague Boettcher and according to the prevailing theory of international law, most production branches of Farben are of a kind that permits the employment of prisoners of war. For the plants of Farben predominantly produced semi-finished products which not even partly served military purposes, either directly or indirectly. In as far, however, as according to the prevailing theory the admissibility of the employment of prisoners of war in several plants of Farben could be called doubtful, it was prohibited as a matter of principle, according to the German regulations, that foreigners and prisoners of war were employed in these plants, because of their secret character. In this connection Schneider was not informed of any violations of international law.

The prisoners from concentration camps, too, had been allocated to Farben on authoritative orders so that, according to the entire factual and legal situation, there was practically no possibility, either to oppose or to decide about the matter on principle, as it was also recognized in the Flick judgment. Only under especially favorable circumstances and in individual cases was it possible for

Farben to evade these measures. Apart from that, the defendants were right in believing that the prisoners who worked in the industry were better off than those in the camps. The correctness of this conception is confirmed by the documents submitted by me. Beyond that, it is not conclusive that an arrest without summons by court constitutes a criminal act in times of war. For reasons of state security it is probably known all over the world. The justification of this conception was recognized by the German Supreme Court as early as 1921. That the prisoners were compelled to work during the last war does not in any way change the fact. The obligation for work also existed for all free persons and, according to Article 5, paragraph 1, of the Anti-Slavery Agreement, forced prisoners, however, worked on buildings important for the conduct of the war or on other projects of this kind for the benefit of the Reich, to which Farben and the other enterprises had to pay an absolutely adequate compensation. On the other hand, industry, due to the prevailing secrecy regulations in regard to concentration camps, obviously had no knowledge of the percentage given to the prisoners in addition to the bonuses which the prisoners received from the industry. It must be furthermore mentioned the prisoners only comprised 2 1/2% of all Farben employees, as it was confirmed by the witness Weiss.

The entire picture of the evidence produced Farben by the Defense has shown that, as far as conditions permitted, Farben has done everything in its power during the war to make the living and working conditions for all their employees, especially those of the foreigners and prisoners, as pleasant as possible.

This applies especially to Dr. Schneider, as is confirmed by the documents and the testimony of the witnesses. He has also attempted to ease the sufferings resulting from the air-war as much

ad this was in his power. He cannot be charged with individual crimes which do not constitute crimes against humanity, as was repeatedly emphasized by the Prosecution also.

A.. this applies especially to Leuna in accordance with Schneider's obligation as the manager of this plant. Here too, I would like to refrain from going into details in regard to questions dealt with in my Closing Brief and wish to refer to the record and my documents. However, at this point, I would like to point especially to the statements given by foreigners employed in Leuna which I have submitted and part of which have even been certified by the American Military Government, a fact which refutes more than anything else the suspicion of collaboration expressed by the Prosecution. The submitted photographs speak for themselves. These documents furnish the best proof for the successful endeavors in Leuna to make the living conditions of the foreigners favorable as possible in regard to the hygienic conditions and in every other respect.

According to the testimony of the witnesses, the repatriating of foreigners to the Gestapo was generally avoided in Leuna as far as this was possible. This, of course, was especially difficult in cases where foreigners had escaped or had not returned from leave. After the spring of 1944, following the first terrible air-raids on Leuna, the number of these cases increased, which is easily understandable. However, if one realized that, according to the submitted contemporary documents from the war in the summer of 1944 an average of 30 to 40,000 escaped foreign workers and prisoners of war were sent by the SS to the SS projects camps alone, in other words to concentration camps, and that, according to the testimony of the witness Stothfaang, the number of employed foreigners during the war amounted to 8 million, it is certainly not an excessive number if 20 persons a month were repatriated in Leuna since the plant, according to the documents of the Prosecution, had about 12,000 foreigners employed. In addition to



that it is a fact that the persons reported by such plants as Iouna were generally not sent to the concentration camps when apprehended but could resume their work in the plant after a light punishment.

No committee from the International Red Cross or from the Protective Power has ever objected to the employment of prisoners of war which was ordered and regulated by the German authorities for several production branches of this largest plant in central Germany. It also conformed with the recognized rules of international law which are evident in the document books presented by Dr. Boettcher. Other wise the Prosecution would have certainly been able to present reports to this effect by the International Red Cross or the Protective Power, as it was done in the Flick trial by Dr. Kranzbuehler who procured this material as counter-evidence.

THE PRESIDENT: Dr. Dix, we will take our recess at this time.

( A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

DR. DIX: (Counsel for Schneider): Due to the pressure by the Gestapo, Dr. Schneider was compelled to accede to the establishment of the Leuna reform camp, all the more because of the fact that he and his plant had great difficulties with the Gestapo at that time, as the evidence has shown. The prisoners obviously were under the control of the SS. When fatalities occurred among these prisoners, Schneider and his assistants, in spite of opposition by the camp administration and the risk involved therein, succeeded with great efforts in establishing the cause beyond any doubts -- insufficient food in the camp controlled by the SS -- and made arrangements that these conditions were corrected. Then, the accidents ceased. That the reformatory camps were different from the concentration camps, has been proved by me. The prisoners of the reformatory camps were detained for the most various reasons and as a rule released after a few weeks.

Thus, Schneider has not become guilty within the meaning of the Indictment either in his capacity as Betriebsfuehrer of Leuna. It should also be mentioned that after the American occupation in 1945 Schneider was confirmed by the American Military Government as the manager of the biggest works of Central Germany and vice-president of the Halle Chamber of Commerce. This would surely not have been done if the conditions prevailing at Leuna for foreigners had been unworthy of human beings, which, incidentally the Prosecution has completely failed to prove.

Twice Schneider visited the Auschwitz plant. On these occasions the impressions he received were, considering the war time conditions, not unfavorable. This is quite understandable according to the results of the evidence taken, since even Prosecution witnesses confirmed such an impression. Although what he could observe of the state of nutrition of the prisoners was not homogenous, he knew that Farben was making continuous and successful efforts to improve working and living conditions, especially the nutrition of the prisoners. According to all that has come to light

about the reputation and the achievements of the plant manager Duerrfeld in the course of the evidence, he was entitled to be confident in this respect. This has also been confirmed before this tribunal by the witness Dr. Giesen, the present works manager of Uerdingen, who shared the main responsibility for the synthesis branch of Auschwitz. The efforts of the plant on behalf of the prisoners were also confirmed by the witness Schneider, now attorney-at-law and municipal director and ministerial director of Goslar, who was dealing with social questions at Auschwitz. How can the defendant Schneider be expected to have become suspicious, being, only in a loose connection with Auschwitz according to all the evidence?

That is why he may and must be trusted, when he asserts that he disbelieved the rumours about gasings at Auschwitz, of which he heard in 1944, and refused to see any connection between them and Auschwitz plant and the Monowitz camp. There were, as the witnesses Fritsche and Muench confirm and everybody knew, a lot of rumours abroad at that time. Of the selections for Birkenau in the Monowitz camp not even the construction manager Faust was informed, as is also confirmed by the Witness Muench. Schneider, living at a distance of several hundred kilometers from Auschwitz, was still less in a position to anticipate things like that, apart from the fact that no-one was able to believe it. The fact must not be ignored that the prisoners had been brought to Monowitz for a particularly important production purpose and had been trained there. It would be wrong not to mention the striking contradictions in the statements of the Prosecution witnesses about volume and nature of the selections. I only point to the affidavit and the testimony of the witness Herzog, who did not mind correcting figures of tens of thousands of killed.

In particular, Peter Pribilla in his affidavit and the witness Muench support the correctness of Schneider's testimony that he had no possibility whatsoever to get enlightenment on those rumours. Schneider, who had searched into the accidents the Z-prisoners at Leuna had met with in spite of the great risk involved, would surely have been the last man to fail to take all possible steps in that case. But the goings-on at



Auschwitz were shrouded into closest secrecy. Surely, the Gestapo would have called that rumour a lying propaganda, if anybody had inquired. Besides, Schneider would not have been able to name the persons, whom he had heard it from, or else he would have gravely endangered them. But the same applied to those, whom he charged with doing this, and, lastly, to himself. Even the International Red Cross was, according to the testimony of Muench, completely deceived on the occasion of its inspections, and maintained, therefore, a passive attitude when the witness Coward, as he testified here, told a commission from the Red Cross of what was going on. If the Red Cross had believed in these rumors, which at that time were already circulating abroad, it would certainly not have occurred that a neutral country, which is closely connected with it and fosters ancient and sublime humanitarian traditions, expelled a great number of racial and political persecutees, who had escaped into its territory, back to the German sphere of power. If even so awe-inspiring powers, which, at that, were outside the direct scope of German sphere of influence, were able to ignore the true facts and even to prevent their disclosure, it ought not to be possible to blame anybody within that sphere of influence for his failure to reveal and stop - on the basis of vague rumors those most terrible, only now disclosed effects of a despotic regime. The more so, as even most of those prisoners who were, as functionaries of the concentration camp, implicated in these goings-on, are now exculpated, and rightly so, according to the statements of some Prosecution witnesses. Looking back, it is fair to say that any steps taken would have possibly meant the dissolution of the Monowitz camp by the SS and the annihilation of its prisoners, if, as far as the gassings were concerned, Hitler's stopping order of 1944 had not been issued which made all such steps unnecessary. But then, failure to take them is no longer relevant. In this point, too, no blame can be attached to Schneider. As far as the further charges contained in the Indictment under Count III are concerned, Dr. Schneider was also in no way corrected through the committees of which he was a member with the business sectors involved herein.

With regard to Counts V and VI, I refer in this respect, and also generally, to the fundamental explanation of my colleagues of the Defense.

In conclusion, may I say a few words as to Schneider's character and background. His professional achievements as a plant manager and inventor, recognized also by the Prosecution, are shown by the documents submitted. His political attitude and way of thinking he explained himself to this tribunal. Schneider joined the Party in 1937, when, after the Olympic games, tension had relaxed in the home policy as well as in foreign policy. The economic and social evolution of Germany was meeting with the appreciation of many people also in foreign countries and only few realized that in the successes of the authoritarian leadership of state and economy all the terrible dangers of despotism were dormant. If Schneider believed then that he was not in a position to defy the invitation to join the Party so as to advance the scope of his personal and official responsibilities, in spite of his mental reluctance, it must be said that this is an argument which is not devoid of some justification for people in his or in similar situations. Even that diplomat of an absolutely democratic country now belonging to the United Nations, who now holds a high position in his country because of his tenacious fight in Germany, accepted as late as at the beginning of 1946, though most reluctantly, the high German decoration, because he was afraid of endangering the lot of his compatriots in Germany by declining it. If, on the one hand, the new tie of the partners was a looser one in this case, the gulf between them, on the other hand, was the wider for that. In both cases one will have to view those resolutions with understanding, since at all times politics demands concessions from nations as well as from individuals.

That Schneider's intentions were honest in that respect, has been proved. For it has always been his aspiration to protect to the best of his knowledge and ability the people who were in his care from arbitrary treatment and exploitation. In this case too, the Prosecution failed to

furnish any evidence to the contrary. For it was as little in his power, to find truth and justice in the face of the irresistibility of the regime, of its program and his secret terror, as it was to the best men of his nation. For that, he cannot possibly be punished and stigmatized as an offender against the laws of warfare and against humanity, with all its disastrous automatic consequences the denazification law would entail for his own and his family's future and existence. All the witnesses who were interrogated about this have testified on behalf of his simple and objective sincerity, his strong sense of justice and his great conscientiousness in regard to social responsibility. The witness Weiss called him the classic Betriebsführer. Thus, this trial too has confirmed what I said at the end of my Opening Speech, namely, that his way of life was not only determined by his professional achievements, but also by all those qualities of his character. May this tribunal, I pray, acquit this man.

as not guilty in all the Counts of the Indictment.



THE PRESIDENT: The Tribunal will now listen to Dr. Hoffman, on behalf of the defendant Ambros.

DR. HOFFMANN (Counsel for the Defendant): May it please the Tribunal, when on 15 December 1947 I undertook to act as Defense Counsel for Otto AMBROS, three things were unknown to me: Otto AMBROS' personality; his importance; and the extent of his work as a chemist, and Farben itself.

Already at the time when the Prosecution presented its case in Chief I had the emotional experience of hearing Otto AMBROS speak, when with the permission of this Honorable Tribunal, he addressed questions to some of the witnesses.

I was impressed by the charming, and at the same time precise manner, in which he spoke as one chemist to another, to men who were his opponents.

That, however, did not by far provide the key to this man's character.

It is a fact that during the presentation of the Prosecution's Case in Chief, Otto AMBROS' name was mentioned many times in connection with the alleged preparation for aggressive war, with plunder and spoliation and with slave labor.

This, however, was at the same time some indication of the extensive part which Otto AMBROS played regarding the happenings in the sphere of German chemistry, but it did not provide a true picture of the nature and extent of his sphere of work.

Although from the beginning of these proceedings, I acted as defense counsel for one of Otto AMBROS' co-defendants, the latter's defense did not call for that insight into Farben, which I found to be essential since taking on Otto AMBROS' defense in order to determine the actual degree of his participation in the events.

It was to be assumed in the normal course of things, that one month should be sufficient in order to complete my knowledge.

I was also of the opinion that I had succeeded in this, during the month at my disposal, before the general opening speeches when the Defense started to present its Case-in-Chief.

I have to admit today, however, that at the time of my opening speech on behalf of Otto AMEROS I was still far from fully grasping that man's importance, his ability, his sphere of work and his position in Farben.

My opening speech for Otto AMEROS was therefore only a formal presentation of a case, and was not carried by sympathy for the man, whose outstanding qualities I did not fully understand at that time.

Only prior to Otto AMEROS going into the witness stand with me for three days, in March 1948, did I grasp what kind of a man Otto AMEROS is, did I understand other chemists' extraordinary devotion to him, did I learn, of what achievements in a certain sphere, a human brain is capable, did I understand why Farben put such a man at the helm, who came to them from the people, without pull or industrial connections.

What would Otto AMEROS have amounted to without his brains of a genius? The son of a Bavarian school teacher, with just sufficient schooling to enroll as a student and to pass his exams.

It was a stroke of luck for Otto AMEROS, that he gained the affection of his University teacher, Professor Richard WILLSTAETTER.

He realized Otto AMEROS' talents and qualities. He equipped him for his career with all the education and scientific knowledge that an older man can give to a younger one, and thereby set himself a monument by far outlasting his own span of life.

But as far as financial success was concerned, the only assistance Richard WILLSTAETTER was able to give Otto AMEROS was the advice to apply for a position with Farben. Otto AMEROS was hired by the Badische Anilin- and Soda Plant, just as they would have hired any other chemist to fill a position which happened to be vacant.

Nobody, however, would have been able to prophesy an outstanding career for that young man.

On the contrary, when the German dyestuffs plants amalgamated in 1925, there were many wishes to be satisfied.

There was little chance for a young, however able, who did not hail from those circles.

And connections?

Otto AMEROS was not related, either by blood or marriage, to any of the leading figures of Farben.

And the fact that he could have quoted Richard WILLSTÄTTER as a reference would, from 1933 onward, have been more of a drawback than a recommendation.

By that, I do not mean to say that dull and industrial background were the only determining factors for advancement in Farben. For that I am not sufficiently familiar with conditions, and Otto AMEROS would only be a living proof to the contrary for such a statement.

But how many good and excellent chemists may have worked in Farben, without getting more than normal recognition for their work; they had to resign themselves to the fact that only they themselves and perhaps a few well informed persons on the inside realized that scientific work was being accomplished here for the benefit of humanity; within the large framework it would show up as the economic success of the giant-conbine and its management, and they themselves would never gain anything from it but their own and their superiors' satisfaction for a job done.

What was it then that brought about Otto AMEROS' advancement? Without being a chemist myself, on the basis of the countless statements of chemists, I am today able to say that it was due to his complete mastery of organic chemistry, above all its most modern branches, namely plastics, raw materials for varnishes, washing agents and ingredients needed in the textile industry, and the countless organic preliminary and intermediary products of all types,



coupled with his rare ability to determine the practical application of the laboratory results on an industrial scale, that Otto AMEROS became a factor in Farben which was not to be overlooked. I am able to quote chemists who said that. Dec. OA No. 108, Exhibit 41, (Vol. I a, page 23) reads as follows:

"Of the approximately 100 million Reichsmark of the annual research budget of the I. G. Farben industry Aktiengesellschaft, about one third was at the disposition of Dr. AMEROS. We can say without boasting that our research laboratories in Ludwigshafen, which were managed by Dr. AMEROS, belonged to the most important of the Farben laboratories and that our efforts were of decisive importance for many modern developments in the field of organic technical chemistry."

"All these achievements have made Dr. AMEROS one of the greatest chemists of German industry and as such he was and will always remain an inspiring ideal to us, his closest co-workers. Ludwigshafen on Rhine, 21 January 1948.

Dr. J. Walter REPP  
Dr. Wolfgang BUELOW  
Dr. Heinrich HOPFF  
Dr. Berthold SCHEEL". . . .

Just as during the prime area of jurisprudence in Germany, there were some men who combined the activities of practice and research work, so, in the sphere of chemistry, Otto AMEROS was gifted with equal mastery of scientific research work and its practical application.

Otto AMEROS became chief of the Ludwigshafen group for intermediary products and the Farben commission for intermediary products, as well as the Farben commission for the production of plastics and raw materials for laundering agents.

He was completely satisfied with that. Articles were appearing in the stores which were made from his plastics, textiles were being dyed with the Indanthren-dyestuffs manufactured at Ludwigshafen

and the products of his commission for raw materials for laundering agents were marketed in the form of soaps and washing agents.

What more could he want?

It was his ideal, to create more new things, to contribute even more towards peaceful development.

I do not know if, given only those conditions, Otto AMEROS would ever have gained more influence in the organization than other chemists.

However, endeavours of the Third Reich to achieve autarchy necessitated new installations not to make HITLER's first aim practicable, namely "to render Germany independent of foreign countries."

One of those possibilities was to replace natural caoutchouc by synthetic caoutchouc, called Buna. It would be tedious to relate in detail the development of Buna and Otto AMEROS' part in it. May it suffice to state that there was no other scientist in Germany better equipped to work on the theory and practice of that subject than Otto AMEROS.

Setting aside all juridical, commercial and political considerations, Otto AMEROS was found to be the one man capable of initiating a large-scale effort in this sphere and therefore he was assigned to this task.

He was assigned to this task under the slogan of savings in foreign exchange and motorization of German civilian traffic needs.

And it was under that slogan that Otto AMEROS accepted the task to create Buna, as is shown by his speech on June 1937 in the House of Technical Science at Essen.

The following is quoted from Doc. DA No. 201/Exh. 51 (vol. 2A/p.

1):

"The motor car industry, in particular, which in Germany and America accounts for about 60 to 70% of the rubber consumption, came to be dependent on it and its whole development. In view of the key position which this industry is gradually coming to hold in the economic life of every modern state,

it is understandable that every country is endeavoring to secure its rubber supply. The new Germany, which considers motorization a decisive factor for economic revival, must be independent in its actions. The State, therefore, decided, as the safest means to solve this problem, to develop its own rubber production by way of a synthesis of Buna."

In this way, Otto AMEROS in 1937 built Schkopau, the first German Buna plant. The fact that in connection with this, he became on 1 Jan. 1938 a member of the Farben Verband was not important to Otto AMEROS. It was perhaps important to those who thereby wished to give to the establishment of the first German Buna plant, the necessary outward character just as in connection with it, Otto AMEROS was made a member of the NSDAP at the same time.

Otto AMEROS devoted himself passionately to the establishment of Schkopau; with that passion that a man brings to a task, which gives him satisfaction in his profession; in the same way as a lawyer takes up a defense out of passion and like an artist creates his works with passion and is obsessed with them.

Whether Otto AMEROS himself pondered on the purpose beyond the official slogan?

I am convinced that he personally was only dominated by the idea to bring about a chemical and technical achievement, and to serve human progress through the creation of Buna.

To produce synthetic caoutchouc in order to replace and improve on the natural product gave the same satisfaction to him, as a chemist, that the discovery of a new therapy gives to a physician, if he can thereby save the lives of his patients.

The Prosecution asserts today: If Otto AMEROS had not produced any Buna, German motor vehicles would not have been able to run; he therefore assisted in the preparation of aggressive war. What mistaken concept of actual facts:

Is it the fault of the physician, if the patient, whose life he saved, becomes a murderer?



The Brothers WRIGHT brought fulfillment to humanity's age old dream of being able to fly. Are they war criminals? Is the memory of these men of genius described because they did not foresee that the fulfillment of that dream would be more of a curse than a blessing?

No, and a hundred times no.

For it is not the fault of the inventor, that technical progress frequently proves more of a curse than a blessing to humanity; it is the responsibility of those, who feel themselves called to direct the fate of humanity and who, when they cannot see any way out of what they believe to be a blind alley, choose war as a way out, which at the same time they present to be the "Father of all things", and a necessity according to the laws of nature itself.

Otto AMBROS, however, was a chemist who was not affected by the play of mundane forces but who was enthusiastic for the task himself. I do not want to create a false impression: I myself am too much a realist in order to present Otto AMBROS as a pure idealist, a pure benefactor of humanity.

No, even to find satisfaction in one's work is a matter of egotism, but it is entirely different from the way the Prosecution presents it. Otto AMBROS had no need to push himself to the foreground in order to be entrusted to such a task as the production of Buna. It fell into his lap on its own accord.

He had no need to bring about the construction of that plant on the basis of illusions and false hopes.

He was called to this task anyway.

The peaceful purpose of the motorization of civilian traffic was in itself a sufficiently logical reason in order to set up such a plant. Otto AMBROS actually created productive values and only such values. He could not guess what later on others would do with them. To me, at any rate, it is established beyond any doubt that Otto AMBROS never constructed the Schkopau Buna plant in order to prepare

an aggressive war.

As a jurist I have only got to ask myself whether Otto AMEROS was perhaps prepared to take it into the bargain, that other intended to use Buna for war purposes?

I would abandon the firm ground of reality, were I to assert that Otto AMEROS would not have produced one single fiber of Buna, had he known that the German army as well would benefit by it. However, there are worlds of difference between that fact and the claim of the Prosecution that Otto AMEROS thereby wanted to assist in the preparation of aggressive war.

Seeing that at that time even the foreign countries recognized the German Army whose allegedly only purpose was to serve for defense, why should Otto AMEROS have had any objections to their using Buna? In knowing and accepting this fact he did not, in my opinion, commit any punishable act. A guilt regarding the preparation for aggressive war within the meaning of the Indictment would only exist under the following two conditions: (1) If Otto AMEROS had personally gone into conference with the rulers of the Third Reich, in order to discuss with them on the waging of aggressive war; (2) If Otto AMEROS had known that a decision and a plan for such an aggressive war had been made.

Today it may be assumed that HITLER wanted war in case his claims for power were not accepted voluntarily: Where, however, is the evidence that HITLER or his collaborators included Otto AMEROS in any form whatever in their counsels or informed him of their intentions? They did this as little in Otto AMEROS' case as in the case of the entire German people.

What has been said with respect to Buna holds equally good, however, of Otto AMEROS' activities in other spheres.

I have mentioned before, that Otto AMEROS was an expert on organic chemistry, which is that branch of chemistry which he repeatedly referred to from the witness stand as the modern chemistry of plastics, raw materials for varnishes, synthetic fibres, laundering agents and in-

gradients used by the textile industry, tanning agents, dyo-stuffs, including preliminary and intermediary products.

They formed the basis of Farben's industrial turn-over, their outstanding position in the sphere of chemistry, but they did not constitute any preparations for aggressive war.

It is a peculiarity of chemical synthesis that materials serving peaceful purposes, may at the same time be suitable for the purposes of war and therefore also military agencies made inquiries of Otto AMBROS concerning the results of his research and his experiences. Thus they were interested about his experiences concerning certain preliminary and intermediary products, which apart from their peaceful purpose, were also suitable for the production of chemical warfare agents, gun powder and explosives.



Thus, Karl KRAUCH asked him to inform him of his experiences and the general development of science in connection with such products. But what did this amount to?

I have already mentioned that ALBROS was a chemist and as such the most important expert in the field of organic chemistry. When a man like Karl KRAUCH approached Otto ALBROS for information, the latter could and would not turn down the request. After all Karl KRAUCH was one of the leading personalities in Farben and it would mean turning everything upside down if one were to expect Otto ALBROS to refuse to give the necessary information.

When the Army Ordnance Office approached Otto ALBROS and asked him for information on various questions, he did not turn these people down but he did what a normal citizen of any state would still do to-day, he gave the official representative of his country the required information.

Moreover, Otto ALBROS, just like most Germans, was exposed to the pressure of the forceful and thoroughly logical propaganda of the Third Reich which managed to convince the public, even in the case of a zigzag course, that the greatly stressed general policy of a peaceful solution of all problems, was being adhered to.

The slogan of re-armament for the protection of peace was used as much at that time as it is to-day. The responsibility for the preservation of such a policy lies with the leading statesmen who determine the actual political course.

The question whether or not this excuse for re-armament was to be kept up, was solely decided by Adolf HITLER and his inner circle. But at that time, the great mass of the people, to which Otto ALBROS belonged as well, believed that this man meant what he said.

Once more to-day experts all over the world are again engaged in military matters.

They trust that their work will not be abused. May they never be disappointed in this trust.

But if this were to happen, could one possibly prefer charges against them?

And does the same not hold true for Otto ALBROS?

The occasional advice which Otto ALBROS gave to army agencies was only a secondary job to him. Moreover, he was of course not the only one who was approached by army or government representatives. Just as they came to him so they approached textile experts in questions of clothing, they called upon the most capable exponents of tropical medicine and anti-epidemic campaigns in medical questions etc. etc.

Otto ALBROS never did more than hand on his experiences and give advice, not even in the one case in which he was perhaps close to doing more than give his expert opinion. I am referring here to the occasion when Karl KRAUCH asked him for his opinion on preliminary products for gunpowder, explosives and chemical warfare agents.

But in 1937, he had to face something different, something that could have changed him with regard to his position and his working sphere, and that was Farben itself.

After he had been appointed to the Vorstand of Farben, he had of course widely different organizational possibilities.

The fact alone that Farben was the result of a merger of many firms which had previously been independent, meant that the various plants could, at a later date, still preserve a certain measure of independence.

Also the large variety of products manufactured by any one of these plants could not prevent an overlapping that is inherent in chemistry as such, but on the other hand it strengthened the independence of each plant in its position as a member of Farben.

When, in 1937, Otto ALBROS was constructing the Schkopau Buna Plant, he would have had the unique opportunity of creating through this plant, an independent position for himself within Farben which could have existed side by side with the old Farben plants.

But in spite of this, he handed the Schkopau plant over after having, for a year, acted as its plant leader.

He did this not because he did not recognize his chance of creating for himself a strong position, but because he had no inclination for being

a factory director. His sole wish was to create and invent. In the same manner, the subsequent construction of a second Buna plant in Huels also remained a milestone in Otto ALBROS' technical work. But as regards his economic and his organizational position he did not wish to become an entrepreneur instead of a chemist.

The only reservation which Otto ALBROS made for himself with regard to his plant at Schkopau, was that he remained the technical representative in the Vorstand of this plant. That was a matter of course for no-one knew more about this plant than the man who had built it up. This was Otto ALBROS' only stake in the Buna plant.

Basically, Otto ALBROS remained true to himself and as a chemist he brought about further improvements in his organic chemistry for the promotion of technical progress and for the benefit of mankind.

After 1938, it is true, doubts seemed to gather as to whether or not HITLER was preparing to realize his aim by means of a war, if necessary, but these doubts were countered by increased propaganda pressure and the complete impossibility of altering matters which had reached the stage where the individual could no longer bring about any changes.

Thus the individual was finally reduced to hoping that a kind fate would will it so that the man who held all the power would be restrained by prudence from resorting to the very last means, namely war.

But no kind fate intervened and war broke out. This war was not hailed with great enthusiasm by the German people.

Terror and dawning recognition of the gigantic betrayal seized the mass of the people. The First World War was still too fresh a memory. The pictures of fathers and sons who had been killed on the battlefield were still hanging in the rooms of the people, in town and country.

Great was the disappointment that this man who had called himself a veteran of the World War, had, although he had continuously given assurances to the contrary, not been able to find any other way out but war - a war, which the broad mass of the German people, did not wish to fight for the sake of the Polish Corridor.



How can we expect Otto AEBIOS to have had thoughts different from those of the majority of Germans?

I believe him when he says that he was just as surprised and horrified as every other German when he heard of the outbreak of war.

This in itself is also the best refutation of the Prosecution's assertion that Otto AEBIOS participated in the preparations for offensive war.

His peacetime work was also interrupted by this war. His home and his main factory in Ludwigshafen were not in the range of the guns and he knew as little as anyone else what the future held for him.

In the beginning, the war brought about no change in his work until the need arose once again for someone to perform practical work.

When France was occupied in 1940/41 and when, after negotiations with the French dye industry lasting almost one year, the firm of Francolor was founded, Otto AEBIOS was called in again in order to make this foundation a technical reality, to enable the French factories to continue their work.

Here again it was a technical task which Otto AEBIOS had to fulfil and he embarked upon it with great eagerness.

Today the Prosecution objects to this action but quite unjustifiedly so, for from a humane point of view, Otto AEBIOS by this very action, helped many French who would have fared badly without such a help and who, but for him, would probably have had to leave home and family in order to go to Germany.

On the other hand Hitler could never have been restrained from acting as he did even if it would not have resulted in the employment of the workers of Francolor, and even if the industrial capacity of Germany would not have been increased in certain sections of peace production.

The Prosecution has tried to assert that Otto AEBIOS mainly endeavored to use the French plants in the interest of German war production, but the opposite is the case.

Apart from minor matters, the real peace production was transferred to France, a fact which in any case facilitated the participation of the

French in this work since they could hardly be expected to make weapons to be used against their Allies. Time and again Otto ALBROS stressed the fact how much he would have liked to have worked with the French.

There is no evidence to show that this is not correct. It is the very fact that during a war a person has treated a conquered people humanely and justly which should provide a reason for a positive valuation of his other intentions. But even a person with the best intentions may nevertheless commit an act to displease another.

But whether or not he can be indicted because of that is another question.

For more than three years we Germans, have been taught what it means to belong to a conquered nation.

I personally have not observed any conciliatory tendencies. I know very well that I belong to a conquered nation. It is just for this very reason that I especially appreciate a friendly word and that I rate good intentions doubly high.

At the time under discussion Otto ALBROS was in the position of the victor.

The fact that he not only exercised moderation but that beyond the natural, correct behavior, he adopted a humane and comradely conduct, can only be counted in his favor. In any case, his conduct lacked any elements of inhumanity, any sting and any intention to enrich himself.

What remains, is the fact that he provided the French plants with work.

If this can be interpreted as a crime then I don't know what is meant by the term. As Otto ALBROS' letters show, he never showed great inclination, even prior to the outbreak of war, to occupy himself with military tasks.

Such work was not in his line and, after all, the Army Ordnance Office had plenty of its own experts for this job.

They could ask him for his experiences, but that was all.

He did not wish to be a military chemist.

In peacetime, Otto AMBROS had succeeded in preserving more or less his independent position.

War put a stop to it.

Otto AMBROS was not tied to any one particular plant. Instead he was commissioned to carry out all sorts of tasks which others could decline by referring to their responsibility in the plants.

He could not even plead a lack of technical knowledge. There was no one who would have believed that he, as leading acetylen chemist, was not in a position to set up a chemical factory which, like Gendorf, was to produce all preliminary products for gun-powder and chemical warfare agents, derived from acetylen.

Thus, Gendorf and subsequently Dyhernfurth and Falkenhagen were set up.

The last two plants manufactured the most modern chemical warfare agents, the large-scale production of which could only be organized during the war.

You will ask whether Otto AMBROS enjoyed this work. I never put this question to him. I merely watched the course of events.

Chemical warfare agents were produced.

When the question arose whether they should be used or not, the decision depended on Otto AMBROS' opinion, which he gave to Hitler at his Headquarters in May 1943. The life of millions of human beings who would have had to experience further torments in addition to the sufferings of war, was at that time in the hands of Otto AMBROS.

And what was Otto AMBROS' conduct?

It cannot be denied that at this decisive moment he did more and achieved more in his endeavors for suffering humanity than all members of the resistance movement together.



The conference itself must have been a breathtaking experience for Otto Ambros. After all he knew what a positive or negative answer from him would amount to.

I can well imagine today how he gathered his spiritual forces.

How he must have pulled together in order to strike the right note at this conference; how he had to weight his words in order to prevent suggesting to the suspicious Fuehrer the very opposite of what he wanted to be done.

It probably even meant complete self-denial.

Who can deny that there was a great temptation in answering the question "are we ready for gas warfare?" by saying: "yes, my Fuehrer."

It could have meant to Otto Ambros: honors, decorations, acclamations the good will of persons in the highest positions and finally the feeling if everything were to turn out alright of being praised as a decisive factor in victory.

These are minor human considerations which become a mere bagatelle compared to the lives of millions of people, but which as a result of human nature are frequently stronger motives than all commands of ethics and common decency.

Otto Ambros managed to shake off this temptation; he carefully and deliberately weighed the pros and cons and he decided against poison gas war.

What ever may happen to Otto Ambros service which he rendered to Germany by this decision will never be forgotten in this country.

The fact that he did not sabotage the production of chemical warfare agents but that he started this production, although at a very slow speed, cannot detract anything from the merit of his action.

There is no provision under International law to prohibit the production of chemical warfare agents. Under these conditions it was impossible to refuse in wartime to produce these materials.

Towards the end of the war, Otto Ambros also sabotaged the order for

destruction and this made a considerable contribution towards the preservation of Upper Bavarian industry.

But all this is insignificant compared to his conduct in the question of poison gas warfare.

In order to give a complete picture of Otto Ambros activities I must also deal with the Farben Auschwitz plant which has been the main topic of this trial during the last few months.

Today the name of Auschwitz has become a concept all over the world,

Unfortunately it has become a concept which to us Germans brings a feeling of distress and shame, a feeling which would be unbearable if we could not plead that it was but a small group of people who committed mass murder there.

Unfortunately Farben erected a plant near this place and the man in charge of construction of its Buna plant was Otto Ambros.

What brought Otto Ambros into that position?

Once again he had been selected to set up a plant which in this instance had not been planned as a part of the policy of self-sufficiency which I mentioned earlier but this plant had become absolutely necessary in order to satisfy the increasing demand of rubber for war purposes.

Otto Ambros had already set up both of the German Buna plants, at Schkopau and Huels. What could be more natural than to entrust him with the setting up of the new plant at Ludwigshafen and Auschwitz?

I am sure that this time Otto Ambros did not embark upon his work with the same ardor as in the case of Schkopau because it did not mean another step in the line of development but was merely set up owing to the requirements of war.

Otto Ambros did what was expected of him.

He selected suitable sites for the erection of a new Buna plant.

The decision as to the actual location of the plant did not rest with him.

Whether Otto Ambros is responsible for the fact that the new plant

was set up in Auschwitz and whether the plant was built there because of the Auschwitz Concentration camp or vice versa must, as far as Otto Ambros is concerned, be decided in his favor if only for the reason that he had been entrusted with the setting-up of a plant only in his capacity of a chemist and technician.

He made suggestions with regard to suitable sites from aspects for which he had to answer as a chemist and technician. The availability of water, coal, and lime made this or that place into a suitable construction site. Water, coal and lime are regional phenomena and cannot be moved but one can bring human beings to them. It is always man who comes to mineral deposits, and not the other way around.

The Auschwitz Plant was not set up where it was because of the concentration camp but the opposite is true.

This is the reason why Otto Ambros declared time and time again that he had selected the construction site without consideration to the concentration camp.

I believe his statement.

In addition, in my trial brief, I brought evidence to prove the truth of his statement.

The employment of workers was the concern of the Reich which had commissioned the construction of the plant and which placed the orders.

The responsible officials and functionaries of the Reich were the persons who had to decide where the suitable workers were to come from.

Thus they were the people who hit upon the ideas to employ concentration camp inmates but it was not Otto Ambros who merely ascertained the existing mineral resources in his capacity as chemist and technician.

If the responsible officials and functionaries of the Reich would have considered it necessary to employ these concentration camp prisoners they would indeed not have found it difficult to erect a concentration camp there, if one had not already existed.



I decline altogether, also in the name of Otto Ambros, to deny Otto Ambros's responsibility for an act for which he has to answer.

But where is the passage in the minutes of any conference, on the subject of the employment of concentration camp inmates, which contains or even mentions the name of Otto Ambros?

And so I repeat my question to the Prosecution "Where is this passage?"

A I know there will be no answer.

It is correct that Otto Ambros's activity was not limited to suggestions concerning the site for the Auschwitz plant. Otto Ambros was also interested in the development of this plant but his interest was the same as that for the plant at Schkopau, Huelo, Gandorf, Dyhernfurth and Falkenhagen.

Otto Ambros was also responsible for the correct planning and development of the plant from a chemical and technical point of view. But he could not occupy himself with the details of practical development.

This must be clearly here. However, Otto Ambros has not failed to point out this fact. You will ask, why?

A I believe I know the answer.

He feared to give to the suspicion of being a coward by shifting the blame from his own shoulders, and nothing can effect this man as much as the fear of losing his self respect. But I, as his counsel, am obliged to call a spade and make matters perfectly clear without consideration for such sensibilities.

But in this connection it is necessary clearly to define his responsibility.

A Man, who did not come to the Auschwitz plant more than, at the most, three or four times a year cannot take over the responsibility for anything that happened at the building site.

Nobody would have expected that of him at that time.

Neither was Auschwitz to become his permanent place of work, just

as little as Schkopau and Huels had been permanent.

Otto Ambros had no abilities to be a director or an entrepreneur

The fact that he participated in construction meetings, even that he visited the concentration camp at Auschwitz and that he saw prisoners at the construction site, has no bearing on this statement.

Otto Ambros could not do anything against the conscription of the prisoners. Their assignment was ordered from above and the labor agencies which were supposed to furnish other laborers, but could not, always referred the plant management to the possibility of using prisoners as laborers which was even ordered from above.

It is understandable that the great mass of prisoners had nothing good to say about Auschwitz-Monowitz.

But, who would expect a prisoner to state that it is nice to be deprived of his liberty? And especially a class of prisoners, who was kept beneath the status of regular prisoners?

Otto Ambros did not all approve of using concentration camp prisoners. But he could not do anything against it. He even visited the concentration camp Auschwitz in order to get informed.

Naturally this visit gave him a completely wrong impression of a concentration camp, to the extent that he even made favorable statements about the various institutions of the Auschwitz camp.

Today, when we know everything, this seems almost incredible, but on the other hand, it also seems credible, if one knows how clear the camp management was in camouflaging things, which it wanted to present in a favorable light.

I have made the test and I called before this Tribunal Dr. Kuonck the only German witness, whom I consider to be beyond doubt and suspicion. Although he himself was an SS physician at the concentration camp from 1943 until the end of the war, Dr. Kuonck was the only one whom the Highest Polish Court at Cracow acquitted in the great Auschwitz trial.

To be true, he had to report terrible things, but I wanted to know the truth, even if it was attacked for it. I believe, that we Germans, more than everybody else, must be most particular about the truth. For this reason such a trustworthy witness was just what I wanted for this High Tribunal. From my speaker's stand I want to thank Otto Ambros that he, in the same way as I wanted to find out the truth approved of my calling this witness.

The positive facts which I learned from the testimony of this witness were, that the truth about Auschwitz was not known to the general public.

I should think that the rumors about the camps did not penetrate beyond an area of about 100 kilometers around Auschwitz.

The rumors passed on within the neighborhood of Auschwitz were of various kinds. They did, however, not furnish the truth about what happened in that sinister forest of Birkenau.

The trains loaded with hundreds or thousands of unhappy victims which went into the Auschwitz camp, turned into the camp before they passed the Auschwitz railroad station. They were closed when they arrived with their victims and they were closed in the same way, when they left the camp empty.

Dr. Muench also confirmed the existence of a model block 13 which was shown to visitors and which had clean barracks as sanitary installations and trained prisoners.

The burning piles of wood on which the unfortunately people who had been killed in the gas chambers were burned, since the crematories could not hold them any more, could not as claimed by one witness be seen from the train or from some other place outside of the camp. They were well camouflaged and were burning in that horrible forest Birkenau; only the light of the fire was reflected on the sky.

Dr. Muench also stated that the Jews who came back to the critical camp from one of the Auschwitz labor camps, were gassed in masses.



It is true that this insane order was valid for all of Auschwitz.

Most unfortunately this order applied to most Jews who were in Auschwitz sooner to some later to others.

Nobody but Kitiner and his leaders, and those who let themselves be made his henchman, could do anything about it.

The prerequisite for any participation even a very loose one, on the part of anybody else would always have been, that he knew something about all that.

Dr. Muench, however, expressly denied this knowledge. At least he made me certain to believe, that Otto Ambros to come back to him could not have known anything about all things, unless he would have been expressly informed of them. But there is not the slightest proof for that.

Only one of all the prisoners who were witnesses here in Nurnberg in connection with the Auschwitz plant, had ever heard of the name of Ambros.

He was the prisoner Pfeffer, whom Otto Ambros addressed during one of his visits at Auschwitz and whom he asked about his works and his plans.

This prisoner testified that Otto Ambros was very good to him. He also said that he suspected that Otto Ambros knew about the fate of the Jews at Auschwitz.

Apart from the fact that Otto Ambros himself denied to have known anything at all about this matter, the feelings of a prisoner can be easily explained.

Most prisoners believed that the world outside would have to know about the things which they themselves know.

They forgot to imagine how the world outside could have gained knowledge about things about which they themselves were not allowed to speak, since they would have been killed had they violated the order to keep silent.

4 June. 48-A-63-25-8-Prison-  
Court 6 case 6

In view of the given facts I cannot understand why the Prosecution always connects Otto Ambros with the assignment of prisoners in Auschwitz and the selection of their place of work with regard to the concentration camp.

The claim that Otto Ambros was responsible for the management of the Auschwitz plant, cannot be maintained. This is best proved if one considers the size of the gigantic enterprise which could be only handled by someone who was right on the spot. Incidentally, Ambros did only half of the planning. The other half was managed by the Leuna plant of Farben.

Ambros document NI 11943/ Exhibit No. 220 proves who determined the selection of the building site:

"High Command of the Wehrmacht, Berlin....

Dear Dr. Ambros. Pardon me for answering so late your letter of 26 January. In the meantime there were several discussions with the Reich Marshall and with General Field Marshall Heitel with regard to the problem of rubber and of Buna, which also had some bearing on the decisions on Buna 4. In the meantime this decision has been reached. The plant will be built at Auschwitz in Upper Silesia. If you wish to have a discussion concerning matters of personnel, I will be at your disposal some day next week.

signed: "signature."

Document Ambros NI 11940/exhibit No. 221 shows who decided about the allocation of labor. It says:

"High Command of the Army, Berlin...."

Re: Labor Requirements for the construction project Montanwerk Auschwitz.

With regard to the above matter I want to inform you that on 17 February 1942 the General Plenipotentiary for Special Questions in the Chemical Industry and the High Command of the Army have reached an agreement according to which Gebochem takes over the task of providing labor for the IG plant (fuel



and Buna) as well as for the Montan plant and that, for this reason both plants will be considered as one unit as far as labor allocation is concerned.

"Signature,"

"What does the Prosecution want to say against these two basic documents, which clear up the real facts completely? The fact that at the Auschwitz plant of Farben there was the draft of a table of organization which mentioned Otto Ambros' name as one of the business BetriebsFuehrer?

Nobody claims to-day that Otto Ambros was not business manager of the Auschwitz plant despite that draft. The fact that weekly reports were made out at the Auschwitz plant, which contained details about the development of the Auschwitz plant and which were also sent to Otto Ambros' office at Ludwieshafen?

When Otto Ambros had completed the necessary preliminary works for the plant or erec to be built at Auschwitz, a staff of engineers and foremen was sent to the construction site. When the plant expanded later on, this staff developed into the plant management of Auschwitz.

The person who was longest at the plant is best qualified to make statements about the development of the plant. This is chief engineer Faust. Upon my question (page 14009F of the English transcript): he said,

"Q. Witness, the Prosecution has said that both Duerrfeld and Ambros wanted to have the fence around the plant at Auschwitz, so that the prisoners would be safe against mistreatment at least while they were at work. Without, commenting on this opinion of the Prosecution, I should like to ask you to what extent was Ambros informed about these things?"

"A. Ambros was normally informed about these things during

the construction meetings. He attended them generally, but I want to emphasize, that at these meetings everything was discussed in general outline and very few details were given.

On page 34045 of the English transcript the witness furthermore says:

"Q. Herr Faust, before the noon recess we were discussing the weekly reports and who read them. What was your position at the construction place?

"A. I was the construction manager.

"Q. And later?

"A. I was the head of the construction department.

"Q. With reference to your affidavit NI 9819 I would like to ask you to explain Ambros' responsibility."

"A. Dr. Ambros, as a member of the Vorstand, was entrusted only with the task of issuing directives, on a broad basis, to the construction engineers according to which the building project was to be carried through.

"Q. You are testifying to that fact as a witness although you yourself were the construction manager and later continued in a function which dealt with the construction of the plant?

"A. Yes.

"Q. Under oath?

"A. Yes."

The entire problem of Otto Ambros' responsibility for Auschwitz and for all plants like Schkopau, Huelo, Zweckel, Gendorf, and Byhernfurth and Ialkenhagen, can be explained in that way that Otto Ambros never was in charge of only one special plant, but that he was only responsible for the sensible development with regard to all chemical and technical matters in all those plants.

All questions concerning the plant management from the

social point of view had nothing to do with his sphere of activities. Otto Ambros is like a ball rolling between two tracks, which touches on all spheres of organic chemistry. One track determining the course of this ball is the departmental organization of the Farben, (the Sparte organization and in addition to this the many state organizations and authorities; the individual life of the plants constitutes the other track. Otto Ambros touches both tracks only on the side.

It would also be completely wrong to say that Otto Ambros is responsible for Auschwitz. As a chemist and technician he represented the Buna branch of Auschwitz at the meetings of the Vorstand, but this was his only connection with Auschwitz; he had entirely the same connections with many other plants.

It just cannot be imagined how Otto Ambros should be punished for having had the best brains as a chemist in all of Germany, for having realized the latest technical achievements and thus, indirectly for having been in contact with the policies and treatment of people in the Third Reich.

It would be a case of participation, if Otto Ambros had at the same time made profits out of it and enlarged his fortune, and had climbed up on the stepladder of success, leaving behind him the bleached skulls of those who had to die at Auschwitz. Nothing of that kind, however, can be said regarding Otto Ambros. Not Otto Ambros, but others are responsible for the deaths of the victims of Auschwitz.

Because of the variety of his duties within Farben, it is difficult for Otto Ambros to define the position he actually held. I vividly recall the case of Luranil, that construction company, which carried out the Reich orders of the state-owned plants of Gendorf, Iyhernfurth, Falkenhagen and also Auschwitz.



It formed the framework, within which, from the legal view point, Otto Ambros had to operate.

I am not sure whether I and Otto Ambros would have succeeded in clarifying the meaning of the Luranil company at all, had not the honorable Judge Curtis J. Shake intervened in my re-direct examination and had elucidated the meaning of "Luranil" pointing out the difference between the German and American version on page 8204 of the transcript in the following manner:

"Q. I think there might be the possibility of some confusion because of the difference in the way in which the term "construction firm" is used in your country and ours. Just in order that I may be clear, may I ask you, did this construction firm employ workmen or did it have building equipment and machinery and tools of its own?

"A. No, Your Honor, they didn't have any equipment of their own.

"Q. Did it enter into construction contracts with principals?

"A. Yes.

"Q. Then did it contract with what you termed "building firms" for the actual construction?

"A. Yes, your Honor, the executing part was then the building firm.

"Q. So that is a clear distinction that you wish to make between what you claim for a construction firm and a building firm?

"A. Yes, your Honor, that's the difference."

Finally I have to deal with the fact, that foreign labor was employed in all plants, under the Otto Ambros' supervision as far as the chemical and scientific sphere was concerned.

As far as the conscription of foreign labor as such is concerned, Otto Ambros tried to help them wherever possible.

There exists no connection with the coercion exerted by the German authorities for labor conscription in the occupied countries, nor with exploitation or profietering.

Thus the picture of Otto Ambros is entirely different from the way it appeared when presented by the Prosecution and it will remain different, whatever else the Prosecution may have to add to it.

Otto Ambros was and remains a chemist and a technician, he neither was nor did he become a manufacturer. To convict him would mean a sentence against the spirit which strives to serve progress. To convict him would also mean to ignore the fact, that one is always wiser afterward than before. Hitler's dictatorship was something completely new for the German people.

The men who could have prevented that dictatorship failed or, rightly or wrongly, believed that an understanding with Hitler could be reached. Those who not even externally wanted to change their attitude had to flee.

The truth concerning the goal and the path leading to it, were withheld from the German people. In Germany itself there was a boom; and it was not for the mass of the people to judge whether it was a genuine or a false boom.

When objectionable measures in the sphere of home or foreign policy were taken, propaganda set in, with all its twists and appeals to the instincts of the masses, thus preventing any mental reflection.

When war finally broke out, and after the impressions of the first easy victories had vanished, the people were held together by means of the slogan "carry on till final victory" coupled with an ever increasing terror.

The state was entirely run by Hitler and a number of his leaders. They decided and their decisions were law.

It could be sensed that something in their actions were reprehensible, but the knowledge essential for real understanding was lacking. Objections were disproved by means of press and radio. What was too self-evident, was not being said at all. Thus, in public, Auschwitz and its gas chambers were not mentioned with a single word, and neither were the Einsatzgruppen in the East. These were the conditions under which Otto Ambros lived in Germany.

But in this situation he could at least preserve his personal decency. The fact that he succeeded in doing this, is shown by his conduct in the question of poison gas warfare, the handling of Franco-color and many other incidents.

It is correct that Otto Ambros did not refuse to carry out the Government commissions which he received. The suspicions which he should have had with regard to his commissions concerning the secret aims of those in power were not aroused because the tremendous counter-propaganda together with apparent successes, produced in him an uncertainty as to the correctness of such feelings, which restrained his doubts.

In addition, there was the pressure of standing under orders which, since it came from an official office, provided also sufficient legal protection.

Forsover at that time the ancient principle prevailed in Germany as well as all over the world that, in war-time, one has to make sacrifices for one's country at the front as well as at home. It is only today that the mass of the German people can realize that, according to their actions, those who were in power in Germany, had no right whatsoever to put forward such a demand. But at that time, Otto Ambros, as much as the majority of Germans, lived according



to this motto and considered it their duty to comply with any government order, Your Honor, do you wish to punish him for this error? Could it not be far better to return such a man to the community for which he has worked in the past and for which he can work once again?

The judgment will have to decide this question.

However, I want to add one more thing.

I have not yet dealt with Control Council Law No. 10 and I have not yet spoken about the justification of this law. I have also not yet investigated here the individual acts of Otto Ambros as to whether or not they are covered by this law.

The latter I did in my trial brief.

In my opinion, my final plea shows in general that Otto Ambros has not committed any offense against Control Council Law No. 10.

But above all I trust that this high Tribunal will only consider as real guilt that which civilized mankind regards as criminal guilt against the laws of nature and ethics, beyond the juristic differences between American and German law as to the concept of guilt in itself. On such a basis Control Council Law No. 10 is but a framework in which Germans today will judge just like Americans.

THE PRESIDENT: The Tribunal will recess until nine o'clock Monday morning.

(The Tribunal adjourned until 0900 hours, 7 June 1948.)

NATIONAL ARCHIVES MICROFILM PUBLICATIONS

Roll 15

Target 2

Volume 42, p. 14,982-15,441

June 7-9, 1948

NATIONAL ARCHIVES MICROFILM PUBLICATIONS

# **OFFICIAL RECORD**

## **UNITED STATES MILITARY TRIBUNALS NURNBERG**

**CASE No. 6 TRIBUNAL VI  
U.S. vs CARL KRAUCH et al  
VOLUME 42**

**TRANSCRIPTS**  
(English)

**7-9 June 1948 pp. 14982-15441**



Official transcript of Military Tribunal VI in the matter of the United States of America against Carl Krauch, et al, defendants, sitting at Nurnberg, Germany, on 7 June 1948, Justice Curtis G. Shako presiding.

THE MARSHAL: The Honorable, the judges of Military Tribunal VI.

Military Tribunal VI is now in session. God save the United States of America and this honorable Tribunal.

There will be order in the court.

THE PRESIDENT: You may make your report, Mr. Marshal.

THE MARSHAL: May it please Your Honors, all the defendants are present in the courtroom.

THE PRESIDENT: The Tribunal is ready to hear the argument of Dr. Schubert on behalf of the defendant Buergin.

DR. SCHUBERT (Counsel for the defendant Buergin):

Your Honors,

I

My client and the other defendants in this case have been charged with an offense which I consider the most heinous of all crimes: the planning, preparing, initiating and waging of aggression; in other words, an unjust war, a war of conquest. On top of this, the defendants are not even credited with idealistic or commendable motives such as patriotism; it is claimed that greed and lust for power motivated their actions. If such a monstrous charge has been raised against men who were no political leaders, no military commanders nor holders of high government offices, then it is necessary to apply the strictest standards of evidence in order to prove the offense.

In the trial brief part I (p.9) the Prosecution has tried to define the crime against peace. The Prosecution holds that a person commits a crime against peace, if he takes part in the strengthening of the military power of a country, although he is conscious of the fact that the increased strength will either be used in order to carry out a national policy of expansion, or that it is actually used in order to deprive the inhabitants of other countries of their territory, their property or their personal liberty. This conception greatly exceeds the legal definition laid down

in art. II paragraph 1 a, of Control Council Law No. 10. The Control Council Law mentions the undertaking of invasions of other countries and of wars of aggression as violations of International Law and International Conventions. According to the Control Council Law, a mere threat based on military power is, therefore, not sufficient whereas it would - in the terms of the definition given by the prosecution - be sufficient as such to constitute a crime against peace. In consequence, it must be considered incumbent on the prosecution to prove that the military power of a country was in fact promoted and, in addition, that those who promoted it were cognizant of the fact that it was intended to use the military power in order to invade other countries or to wage war of aggression in violation of International Law and International Conventions. Furthermore, it must be kept in mind that art. II, paragraph 2 f requires that the defendant hold a prominent post in the financial, industrial or economic sphere. This restrictive interpretation is the only interpretation by which this provision can be given a reasonable meaning: it is its purport to restrict and limit the types of persons who can be prosecuted for crimes against peace. Otherwise, it could be held in theory that every ammunition worker and practically every person in Germany who did some kind of work during the war, were liable to prosecution.

If this criterion is applied to the activities of the defendant BUERGIN, his activities prior to the 1 January 1938 must, in my opinion, be left out of consideration altogether. They are not relevant in the meaning of criminal law, for up to that date BUERGIN only held the post of a "Prokurist", which is not a prominent post in the terms of art. II 2 f, of the Control Council Law. I shall, therefore, deal with the period prior to 1 January 1938 only by way of precaution. In this connection, I should like to make it quite clear that the turn of the years 1937/1938 marked an important turning point and a caesura in the industrial career of my client.

The evidence introduced by the Prosecution in connection with count I of the indictment - in as much as it refers to the Works Combine Central

Germany, so that it seems to have been introduced against my client-included two main subjects, viz. light metals and raw products to be used in the manufacture of explosives. If we keep in mind that the 1st January 1938 is the decisive dateline, then the construction of the Aken, Stassfurt and Teutschenthal plants -which pertain to the field of light metals-must as such be left out of consideration in the case of Dr. BUENDIN, apart from the fact that the post which he held at that time had nothing to do with these projects, and that he had to begin by making himself acquainted with the technicalities of magnesium production which had been completely unknown to him until 1932. As far as the further processing was concerned, he had until 1938 never dealt with anyhow. - In the field of raw products to be used in the manufacture of explosives, no new plants but only extensions of existing plants were constructed after 1 January 1938.

The fact that Dr. BUENDIN has contributed to re-armament is, of course, not open to any doubt whatsoever. Neither he nor his superiors, colleagues and subordinates considered this a crime. But it has not been claimed by the prosecution, nor is it probable that Dr. BUENDIN, of all people, ever obtained special information concerning the intentions of the political leader. Dr. BUENDIN can, therefore, be found guilty of a crime against peace only if either the general political trend in Germany or the type and amount of the products manufactured in his plant enabled him to realize that wars of aggression were actually impending, a state of mind which is one of the elements constituting such crime. In fact, both of these two assertions seem to have been put forward by the Prosecution.

In order to prove that not a single person in Germany doubted Hitler's intention of waging a war of aggression, the Prosecution has produced the witness Paul Otto Schmidt. The affidavits submitted by this witness are far from proving that this fact was generally known in Germany. In addition, this witness was forced to restrict his statements considerably under cross-examination, so that his deposition does not amount to any proof at all. In addition, there is another reason why the deposition of a witness of the type of Schmidt is quite inappropriate: in his capacity of interpreter,



Paul Otto Schmidt attended practically all discussions between foreign diplomats or other foreign economic or political leaders on the one hand and the German leaders on the other hand; thus, he is at present quite unable to distinguish between those facts which were generally known in 1939 and those which were just known to Paul Otto Schmidt.- It is true that the political trend may have caused much sorrow to many people, particularly in 1939. Many people felt uneasy and wondered where the course steered by Hitler might lead them. However, neither the German people as such nor the German industrialists -who were not given any special information on this matter- really know what was in prospect, neither did they know that Hitler was aiming at conquests, except for those few who obtained direct information from Hitler's circle. My client Dr. BUERGIN was in the same position as the masses of the German people. In order to assess the real mood of the German people and the amazement and gloom caused by the military measures taken on 1 September 1939, it is important to read the pertinent description given by the late British Ambassador in Berlin, Henderson, in his book "Failure of a Mission"; the impact of his words is particularly poignant for those who experienced these events within Germany. I quote from page 287 sq.:

"...I am glad to take this opportunity to bear witness to the fact that throughout these anxious weeks, and up to the very end, when we crossed the German frontier, neither I nor any member of my staff was subjected at any time to any discourtesy or even a single gesture of hostility. It was a very different eve of war from that of August 1914. ... My impression was that the mass of the German people -that other Germany- were horror-struck at the whole idea of war which was being thus thrust upon them. ... But what I can say is that the whole general atmosphere in Berlin itself was one of utter gloom and depression. ..."

Similarly, Dr. BUERGIN, too, was surprised and shocked by the outbreak of war, which he had not foreseen. The majority of the German people had not foreseen it either, all the more as the Fuehrer of the German people himself had been a combat soldier in the first world war, and as he had often stressed that he had experienced the horrors of war himself.

In the indictment, the Prosecution has emphasized that the defendants were members of the NSDAP without exception. Apparently, this implies the

conclusion that the defendants agreed with the political aims of the National Socialists and that they were willing to put up with war - and even with a war of aggression - provided it promoted the aims of the National Socialists. The members of the staff of the prosecution did not live in Germany during the National Socialist regime. Thus, they cannot realize how easy it was to become a party member and how difficult it was - in particular for holders of ranking political or economic posts - to evade joining the party. Only very few have managed to do so. In 1937, Dr. BUECHER made up his mind to join the party, because he felt that as a party member he would have a better standing vis-a-vis the representatives of the party, the German Labor Front and other organizations with which Farben, in its capacity of an employer, was confronted all the time and which were often not easy to deal with. Actually, Dr. BUECHER, by joining the party, reached his aim, and obtained a stronger standing vis-a-vis the party authorities. A number of affidavits strongly testify to the fact that he never was a National Socialist in his heart.

I have shown that the political trend as such did not enable BUECHER to realize the real aims of the political leaders. It remains to ascertain whether he could obtain such knowledge from the type and amount of the products manufactured in the plants in his charge. Now, the set-up was such that the plants Bitterfeld and Wolfen did not produce finished products which could be used, as such by the armed forces; they only produced semi-finished and similar products, the final purpose of which could frequently not be inferred. For this reason, the Prosecution took much pains - particularly in cross-examination and in the rebuttal - to prove that the final applications of these products were known to Farben and to Dr. BUECHER in particular. I never denied that this was partly the case. When producing evidence on behalf of my client, I have myself discussed a large number of applications, in particular of light metal products. It is obvious that light metal can be used in commercial air planes as well as in bombers or fighter planes, in equipment for merchant ships as well as for warships, for civilian as well as for military optical

purposes. A large number of similar examples could be given.

4. The prosecution has stressed certain applications of light metals with particular emphasis. In my opinion, it is sufficient to discuss two of them, though even they do not seem to be essential or decisive. These two products are textile cartridges (Textilhuelsen) for incendiary bombs and light metal components of air planes. As far as other military applications such as wheels for guns, superstructures for destroyers etc. are concerned, the quantities proved by the evidence are so negligible that it seems unnecessary to discuss them in detail. The bombers carrying magnesium armor which are mentioned in the indictment belong to the realm of imagination.



As far as the textile cartridges (Textilmunition) are concerned, the Prosecution points out: that they were used for a purpose which the Prosecution obviously considers very impressive, because, on the one hand it was recognizable and actually well known to the general public at Bitterfeld or Aachen according to the testimonies of the witnesses, and because, on the other hand, an incendiary bomb may perhaps be justifiably regarded as a weapon of attack, though even the defender needs weapons of attack.

If one considers the sober statistics concerning the production of these textile cartridges (my Exhibit 83) - I wish to stress explicitly that no incendiary bombs, but only normal tubes were manufactured at Bitterfeld - one is struck with the development during the years 1934 to 1937, in which the production went up by leaps and bounds. In 1938, when BUERGELIN took over the direction of the Betriebsgemeinschaft Mitteldeutschland, hardly any textile cartridges were manufactured, during the years 1939 and 1940 none at all. Only during the war a modest production was again resumed, and the manufacture during the years 1943 / 1944 did not, on an average, amount to more than 8.2% of the entire Magnesium production. Thus, the whole scope of this matter was not of great importance, on no account was it important during the period that Dr. BUERGELIN was Vorstand and as such responsible for the production; for during those years it only amounted to 3.8% of the entire production.

The aircraft industry certainly used up great quantities of light metals. That a German air force was being built up was known to every child in Germany, at any rate after 1935. But in order to be able to draw conclusions from the structure of this air force concerning the nature of an intended war, one would have had to know the extent and the nature of the production, and in particular the types and the number of individual types produced.

In Exhibit 1970, which was submitted to the witness for the

defense, MILCH, during his cross examination, the Prosecution has attempted to prove that BUERGIN had such knowledge, at any rate concerning one part of the field in question. The witness for the Defense, WEBER, however, made it convincingly clear from the document itself that it was never forwarded to BUERGIN. Thus it has not been proved that BUERGIN ever took note of this Exhibit 1970, in which the production figures for certain types of aircraft which it was intended to manufacture during the years 1938, 1939 and 1940, were mentioned. Actually I should almost wish that BUERGIN had seen this document at the time; for the production figures mentioned therein are so surprisingly low that nobody could ever have drawn any conclusions from this kind of production with regard to Germany's alleged plan of creating for herself an overwhelming airforce sufficient to wage a war of aggression against the whole of Europe.

After they had not succeeded in furnishing the necessary proof with the help of Prosecution Exhibit 1970, the Prosecution attempted to prove with the help of an affidavit (Exhibit 2251), submitted during the rebuttal by their collaborator, Mr. Hans WOLFFSOHN, that everybody in Germany could form a picture of what aircraft were being constructed, simply on the basis of the publications about aircraft and types of aircraft which were accessible to the general public, and that the producers of light metals would have been in a position, with the help of these publications and by using a construction chart for aircraft engineers, to calculate the extent of the aircraft production without further ado.

I should like to say to the affiant, Mr. WOLFFSOHN, the word: "O si tacuisses". The expositions are rather phantastic in themselves, but if one then looks at the publications on which Mr. WOLFFSOHN has based his potential calculations and discovers amongst them, for instance, the cigarette picture service of Herr Philipp REENTISMA, which was intended to satisfy the longing of youngsters for beautiful,

glamorous, colored pictures of aircraft, one must ask oneself: does the Prosecution really believe that the Reich Ministry for Aviation which, as has been shown in this trial, preferred to put their secrecy stamp on 99 documents too many, rather than on one too little, would have permitted publications concerning military aircraft from which an amateur, such as Mr. WOLFFSOHN, and thus naturally the Foreign Intelligence Service as well, could have gathered without difficulty what the actual state of German aircraft production was at any given moment? The formulation of this question implies an answer in the negative.

One must always remind oneself that 70% of Farben's production of electron metals at Bitterfeld went out as pig metal, and 30% as semi-finished products, amongst which were very crude semi-finished products such as blocks, bars etc. The pig-metal mostly delivered to the foundries. What happened to it there could only be known to Farben if their customer informed them about his manufacturing program. But he was not entitled to do this if it was a question of military contracts.

Neither should it be forgotten that up to 1939, at least, there was a considerable amount of civilian business done in the magnesium field.

When the agreements concerning the new magnesium plants at Aachen and Stassfurt were concluded they included provisions according to which deliveries to third persons, i.e. not to the Reich or to agencies designated by the Reich, entailed the payment of a license fee to the Reich amounting to 5 - 15 Pfg. per kg of metal. By reason of these provisions a total of RM 9,6 millions was paid to the Reich, which corresponds to 96,000 tons of metal if one assumes an average fee of 10 Pfg. per kg. A considerable amount of this was probably delivered for civilian requirements. An amount of about 20,000 tons of electron per year were earmarked for the Volkswagenwerk alone. That is



why the plant at Stassfurt was started at the end of 1938. Also there was a considerable amount of exports up to 1939.

The development of magnesium in Germany had been taken up on an ever increasing scale since 1934. This development graph might have perhaps struck the persons concerned if the same development had not taken place at the same time in foreign countries. In 1934, i.e., the year in which the Aaken plant was being built, plants for the manufacture of magnesium were also started in France. In 1935, when the plant at Stassfurt was being built, the constructions for a large magnesium plant at Clifton Junction were simultaneously started in England. The officials of Farben who concerned themselves with magnesium thus saw the same interest in other countries also, and watched a development which was similar in principle. That the development in Germany should be on a larger scale could not surprise anybody, as Germany was after all the country where the electron had originated, and she was forced by reason of her well-known shortage of raw materials to develop productions which were at that time of no interest to richer countries.

The only one of the large industrial countries which did not participate in the development of magnesium were the United States of America. This fact has been used by the Prosecution to incriminate Farben and they hold Farben responsible for it. As a matter of fact Farben made the very greatest efforts in order to interest the industry of the USA in magnesium; as early as 1931 an agreement between Farben and the largest producer of aluminum in the USA, ALCOA, had been concluded, the so-called ALIG-agreement, which aimed at pushing the development of magnesium in the USA; later on, too, everything was done to keep interest in America alive. Dr. BUERGIN was not concerned with this development up to 1938, but during the time which followed he tried to bring about a frank and honest exchange of experiences with all foreign countries, amongst them the USA; he did

this even after the war between Germany and Great Britain had broken out. The Truman report which was offered by me as defense document Exhibit 33 clears up the matter completely. There can be no question of Farben having held up the development of magnesium in the USA. But the industry of the USA at first showed only very little interest for the new material, and it was only during the war that the initiative of the Government made good what the industrialists of the USA had previously neglected, in spite of the fact that Farben had placed every technical opportunity at their disposal.

B. Another field in which the Prosecution tries to connect Farben, Bitterfeld and Dr. BUECHLIN with preparations for war is the field of the so-called raw products to be used in the manufacture of explosives (Sprengstoff Vorprodukte). In this connection, the Prosecution has submitted a wealth of material and enumerated a confusing variety of chemical compounds. In this plea, I shall only discuss the most important items.

1) The Diglykol- and Stabilizer Plant in Wolfen (the so-called Z- and St.-Plant).

This installation belonged to the Reich. It did not belong to Farben; it was only managed by Farben on behalf of the Reich. This plant was projected and constructed before 1938, and it was before 1938 when Diglykol production in the plant started. All this happened before Dr. BUECHLIN became a Vorstand member. Prior to his appointment as a Vorstand member, Dr. BUECHLIN did not handle this matter at all, because it concerned organic substances.

2) The Oleum-plants in Wolfen and Döberitz.

These plants, too, were not Farben installations, but installations belonging to the WIFO, in other words virtually owned by the Reich. These installations, too, were set up before 1938. They were projected within the framework of a general drive ordered by the authorities and aiming at an increased Oleum production.

- 3) The Hoko-plants, i.e. plants for the production of highly concentrated nitric acid in Doeberitz and Wolfen.

These were again WIFO installations, i.e. virtually Reich installations constructed before 1938. In the beginning, the Doeberitz plant was subordinated to the Sparte I Oppau; it was only later that it was merged in the Sparte I Central Germany of which BUERGIN was in charge.

- 4) Wolfen plant producing sulphuric acid from gypsum.

Of all the installations mentioned, this is the only one which was owned by Farben. It was mainly constructed for the purpose of producing sulphuric acid necessary for the production of cellulose in the Wolfen film plant. This plant producing sulphuric acid from gypsum was not suitable for Oxum production, i.e. for the production of explosives. This installation, too, was established before 1938. The other chemical substances mentioned in this connection are less important; I have dealt with them, therefore, only in my Trial Brief.

To sum up, the following explanations pertain to all the substances mentioned:

- a) Farben as such did not produce explosives.
- b) Most of the material, mentioned above had been produced by Farben at all times. It is true that after 1933 the production of part of these materials was increased. Inasmuch, however, as Farben was not satisfied that a sufficient civilian market for the increased production was assured for the future, Farben did not construct new extensions of its own; it was left to the Reich to construct them at its own expense. Farben only undertook to manage these Reich owned plants on behalf of the Reich.
- c) The raw products produced by Farben in order to be used in the manufacture of explosives were delivered to the plants producing explosives or semi-finished products for explosives. The technical managers of the individual departments did not know the total amount of these deliveries. It is possible that the sales departments were



in the position to estimate this amount approximately. At any rate, Dr. BUERGIN had no information on that matter.

d) Explosives in any shape or form can be used in defensive warfare as well as in aggressive war. They are used by every army throughout the world. In consequence, Dr. BUERGIN was not in a position to ascertain how the output would eventually be used. In addition, it must be kept in mind that if he was able to form a comprehensive estimate at all, this applied to his own restricted sector only, not to the total output of the German production of raw products to be used in the manufacture of explosives. A considerable number of witnesses produced by the Defense have stated that the ammunition stores of the German army were in 1939 not sufficient by far in order to wage a lengthy war or a world war.

e) The projects for all plants concerned had been agreed upon between Dr. PISTOR - BUERGIN's predecessor - and the Army Ordnance Office at a time prior to the date when Dr. BUERGIN was appointed a Vorstand member. Construction, in some cases even production, had also been started before that time.

How is it possible to use those developments - which were already in full swing when Dr. BUERGIN became a Vorstand member - in order to concentrate the responsibility on Dr. BUERGIN? How can the restricted knowledge which Dr. BUERGIN, once appointed Vorstand member, acquired by degrees, have enabled him to acquire the additional knowledge of the fact that this development could not but result in a war of aggression - a state of mind without which he cannot be found guilty?

The further charges raised by the Prosecution in connection with the hoarding of war material and with espionage have so clearly been refuted by the evidence produced by the Defense, that it seems superfluous to discuss them in the plea. I have discussed this matter fully in the Trial Brief.

C. The Prosecution has also tried to establish a certain connection of BUECHIN with the Four Years' Plan. Actually, this connection consists only in the fact that BUECHIN provided the office of the Four Years' Plan with certain statistics on chlorine production; these statistics were available to him in his capacity of Head of the so-called Chlorine-UKD (Subcommittee) of the I.G. No close connection with the Four Years' Plan ever existed. In particular, Dr. BUECHIN had no information concerning the overall planning which was projected and partly carried out by the Four Years' Plan.

D. The following can be said as a summary:

The economic preparation of industry for a possible war took place in Germany just like in any other country which had an Army. The part which Dr. BUERGIN played in this connection and his participation was a very small one. It was practically limited to the period from 1 January 1938 onwards. Especially in Bitterfeld, there were no great changes from this time on until the outbreak of the war. Large-scale extensions were carried out again only after the beginning of the war, and all these installations and extensions were constructed under the pressure of the official authorities, against which every opposition would have been of no avail and dangerous.

There exists no reason for the assumption that Dr. BUERGIN did know about the secret aggressive intentions of the political leadership. He could not arrive at such a conclusion, from the statement which the political leaders themselves uttered, who on the contrary again and again emphasized their willingness to maintain peace; nor was he able to conclude that from the entire political development, which, it is true, became more serious during the years 1938 and 1939, but which was nevertheless accompanied by the leadership with peaceful statements. Finally he was not able to conclude that from the kind and extent of the production because it could simply be used for armament as such, but did not contain any fact which would show that it could or was to be used in a war of aggression. On the other hand, however, there were many other things from which Dr. BUERGIN believed to be able to see that in any case the management of Farben and also the governmental offices consulted in this connection had in mind a peaceful development. One of these things was the extensive exchange of experience with foreign countries in fields which were of special importance in case of war. Further there were the installations for the production of magnesium with Farben licenses in England and France. And even in spring 1939 there was the conclusion of an agreement on a patent and experiences pool with Belgium, England and



Czechoslovakia in the field of electrolysis through the chlorine alkali process; Dr. BUECHER himself participated in the conclusion of this agreement and he reported on it to the witness stand. All these measures required the permission of those German authorities which handled armament matters, and this permission was granted by the authorities without conditions. This certainly did not look as if Germany would intend attacking its neighbors with force of arms during the coming months.

The prosecution let it appear as a decisive motive for Farben that Farben wanted to profit by the war. In this connection it does not take into consideration that all the men here in the dock already witnessed the first world war and gained the experience that at the end even the victor does not profit anything from a large-scale war of long duration, but that the consequences for the conquered are catastrophic. Nor is it possible to coordinate the motive of profiteering by the war with the fact that Farben, as we saw, did not construct installations for which they did not expect a permanent civilian market, on their own. If it wanted only to make profits, it would have had to build and operate these very installations because otherwise it would have permitted the state to take the best chances of profit out of their hands.

In conclusion of my statements about this decisive and important count of the indictment I would like to ask the Tribunal with the greatest emphasis to pay special attention to the following two considerations:

1.) The men who are in the dock here have done exactly the same thing as their foreign colleagues; just like the entire German nation, they were misused by the political leadership. The only reproach which perhaps could be made to them, would be that that they did not have sufficient political foresight. And in this they do not stand alone. This reproach could be made in the same manner, even more justly to a number of foreign statesmen in high and highest positions, whose special field of work is the knowledge of diplomacy of other countries and who were also fooled by HITLER.

2.) The prosecution emphasizes that many blissful inventions for the humanity originated from Farben. The witness for the prosecution, Elias, has stated expressly that nearly all the products which were mentioned and played a part in this trial, can be used in peacetime as well as in wartime. The American Military Tribunals in Nuernberg are of the opinion that civilians, i.e., such persons who neither participated in the Military nor the political leadership, can be made personally responsible for offenses against International Law.

I do not want to argue here as to whether this opinion is correct. However, I would not like to refrain from pointing out the great danger which would result for the freedom of research in case of a possible sentencing of industrialists, and in particular of technical and scientific researchers. The freedom of research only is the guarantee for human progress. Therefore your decision, Your Honors, should avoid the danger of doubt with which every researcher would be confronted if these defendants would be sentenced: Am I permitted to continue to work in my special field of research or does it make me already a criminal against peace? Whether and which practical consequences will result in the future from the Nuernberg theory of the responsibility of the individual in International Law is a question which is still open. In the field of research, however, there exists the danger of very negative consequences for the entire humanity.

## II.

In count 2 and 3 of the indictment, Dr. BUEHRIN is being connected with war crimes and crimes against humanity in the field of robbery and plunder as well as of slave labor. The accusations of the prosecution are based on the Control Council Law No. 10 and on some regulations of the Hague Rules on Land Warfare. There is no doubt that the Hague Rules on Land Warfare were violated by both sides during the unheard-of events and the unique social changes of the last war; such violations are inevitably committed in every war. In my opinion, it is not the task of these Tribunals

to sentence every such violation, even if they are only chance single events or exceptional cases. The wording of article II, 1b and c of Control Council Law No. 10 presupposes a larger extent and a certain system in committing the offenses. According to that, not every mistake, although it may have been highly deplorable in the individual case, should be punished, but only those violations which, in a larger frame, can be considered as war crimes and crimes against humanity. The titles of the indictment, such as "Robbery and Plunder" and "Slave Labor" also point to this fact. The judgment in the Justice Trial (case 3) explicitly emphasizes this idea in connection with the crimes against humanity by the following words (transcript page 106 46)

....."We hold that crimes against humanity as defined in CC Law 10 must be strictly construed to exclude isolated cases of atrocities or persecutions whether committed by private individuals or by governmental authority."

Therefore I request the Tribunal to judge especially this count of the indictment in a generous way, remembering the old Roman legal sentence: "Minima non curat praetor."

1) In the count of the indictment "Robbery and Plunder", Dr. BUERGIN is being connected with 4 issues.

a) The first issue concerns the trip to Poland which Dr. BUERGIN and the defendant WURSTER made in autumn 1939 for information purposes. It is not quite clear what the prosecution tries to prove by submitting this material. It has been ascertained that during this trip only one inspection has been carried out, nothing has been taken away and there is no proof whatsoever that the trip to Poland resulted in any consequences involving transactions of property. The trip of Dr. BUERGIN, in particular, touched a field and concerned Polish enterprises which had no connection with the Boruta, Wola and Winnica cases, in which Farben was interested later on. Therefore the facts in this issue do not constitute any offense punishable in criminal law.

b) The second issue concerns an apparatus from Blyzin, in Poland, which Farben had purchased from the OKH. The facts of this case are



completely unclear. The prosecution documents did not show, and neither could the defense clarify where the OKH got hold of this apparatus and whether in accordance with the Hague Rules on Land Warfare the OKH had the right to dispose of this apparatus. Nor is there any proof of the fact that in this case in Poland Farben showed any activity or initiative at all. The only thing which has been ascertained is that Farben has purchased the apparatus from the OKH, an apparatus which originated from somewhere in Poland, apparently from Blyzin. No proof was submitted that the OKH has robbed or looted this apparatus, and even if one would assume this most serious case without having a shadow of proof for it, in this case a possible robbery or plunder of the OKH would have been finished and concluded before Farben received the apparatus. Thus, even then it would not have been possible that Farben would have participated in a possible crime of robbery or plunder committed by the OKH.

Now in this case, the prosecution objects especially to the fact that Farben issued invoices on Farben invoice forms. Nothing can be easier explained than this process. Farben Bitterfeld had not yet received an invoice for the apparatus from the OKH. The individual plants which received parts of this apparatus had, however, to show in their books which were kept according to regulations a sum equal to the purchase price which was still open. For this purpose Farben Bitterfeld issued formal invoices for the individual plants. It is to be assumed that this matter was later settled properly in the usual commercial way by final accounting in the books and by payment.

c) In order to prove an act of spoliation in Russia the prosecution submitted several documents which concern a "Soda- and Aetzalkalien Ost GmbH" in which Farben had a small share. I have proved that this company was founded exclusively to administer advice and take care of plants located in Russia which concerned with work in this field. In accordance with this task the company did only bring material to Russia but did not remove anything from there. The result of this action became

apparent when the firm was liquidated. Not only did the company reap no profit during its two years of existence but it lost the major part of its capital. This is truly a bad example for robbery and spoliation.

d) The biggest issue with which the prosecution connected Dr. BUERGIN is the issue of Norway. The prosecution did not make it clear on which special facts it based its indictment.

The following events can be excluded as irrelevant from the very beginning:

- 1) The extensive plans, which were submitted in this connection, of production on a large scale of light metals, especially aluminum, in Norway, because these plans were not carried out at all under the participation of Farben.
- 2) The founding of the Nordisk Lettmetall as such, because nobody was deprived of anything by this founding;
- 3) the extension of the installation of the Nordisk Lettmetall because, even if these installations were constructed with Farben excessive expenses due to wartime conditions, did not gain anything for which the Norwegians had to pay.

Theoretically only the following facts could be of importance:

- 1) The purchase of the French subscription rights of the Norsk Hydro by Farben;
- 2) The taking of the production of the newly-founded Nordisk Lettmetall;
- 3) the removal of apparatus after the Nordisk Lettmetall had been damaged by bombs.

Now, if one considers these events, it has to be noted that to begin with, Dr. BUERGIN had no part in the purchase of the French subscription rights of the Norsk Hydro. Production of the Nordisk Lettmetall which Farben could have taken over was not started at all. The removal of apparatus after bomb damage had been inflicted, to begin with, was brought to Norway by German partners of the Nordisk Lettmetall, was neither ordered nor carried out by Farben, but by the Reich Ministry of Aviation. In spite of the opposition of Farben this removal was finally carried out by force and in this connection the major part of the removed apparatus remained in Norway proper. Only a small part of it reached Germany and a still smaller part Farben in Bitterfeld.

7 June-M-IL-3-7-Schwab  
Court VI Case VI

Now, does this last case contain facts which would warrant a charge of robber and plunder in the sense of a war crime? One should consider the legal position. Farben had a share in the firm Nordisk Lettmetall.



The substratum of this participation, namely appliances which were of German origin, was brought, under the pressure of the Reich, among other places also to Bitterfeld, but most of it has remained in Norway. Even after the removal a valuable share of Farben, in the remaining installations was preserved. This share has been expropriated without indemnity after the war. Thus Norway, which through Norsk Hydro had contributed only one third to the establishment of the Nordisk Lettmetall, has received values exceeding considerably the value of the original investment. What permanent value for the Norwegian economy the plant in Norway represents will not be shown until later, when the installations of the Nordisk Lettmetall will be operated; this was done partly this year. Thus Norway gets a modern light metal production which it was lacking until now. It is obvious that Norway was not robbed or looted, in fact it has become the "tertius gaudens". Therefore there can not be any question of robbery or looting and it is significant that the prosecution has been unable to submit even one affidavit of a Norwegian which would support the charge as to robbery and spoliation.

2) The last count concerns slave labor. First, there is the question which facts are punishable at all from this point of view. Art. II, 1 b (War crimes) quotes as special examples "deportation of the civilian population of the occupied territories for slave labor or other purposes, or the use of slave labor within the occupied territories". There is no proof that Dr. BUERGIN or the Farben Bitterfeld participated in the deportation of the population of the occupied territories for slave labor. Not until during the rebuttal has the prosecution produced as exhibit 2173 a letter of the Farben Bitterfeld to the works- and division chiefs, according to which Dutchmen after having terminated their period of work could be again conscripted in Holland

for compulsory emergency service. This document, however, does not show whether this possibility was used at all and Dr. Buerger also did question that seriously on the witness stand. The fact that workers on loan were employed in Bitterfeld is also no proof of a deportation, since there always have been workers on loan. Therefore there is no evidence that Farben Bitterfeld cooperated in the deportation of the population of occupied territories for slave labor, particularly that Dr. Buerger participated therein or know anything about it.

If the prosecution would claim that the employment of workers hired involuntarily is generally a violation of the Hague Rules on Land Warfare and a war crime, then every German employer is liable to punishment since everyone had foreign workers and it is impossible to find out today which foreign workers came voluntarily and which ones under coercion. At any rate the defendants may plead the state of necessity which applied to all of them and which was recognized in the Flick trial as a defense for the defendants. No German employer could refuse the assignment of foreign workers during the war without incurring the most serious personal danger, since thus he could not have fulfilled his obligations of deliveries, and would have lost at least his liberty or perhaps his life for committing sabotage. An employer who got foreign workers assigned for employment had in such a situation no choice; it was only his moral and possibly his legal duty to alleviate the lot of these foreign workers as much as possible and not to put them into a more difficult and unpleasant situation by improper treatment.

Therefore this is essentially a problem of treatment of the foreign workers right on the spot. The Control Council Law quotes murder and maltreatments as examples of punishable acts.

The prosecution obviously want to claim that murders occurred at the Farben Bitterfeld. In this connection the prosecution put forward two cases, first the hanging of 5 Russians before the Eastern workers camp and, second, the shooting of an Eastern worker by the plant police.

The evidence has proved irrefutable that Farben had nothing whatsoever to do with the most unpleasant incident of the hanging of the Eastern workers. Those were not members of Farben personnel but Russians who were brought by the Gestapo from other camps and regions and, in order to deter the Farben Eastern workers, were hanged in front of their camp. Farben did not aid this in any way, it even refused aid in spite of the more and more urgent requests of the Gestapo, whereby witness Dr. Lang, as representative of Dr. Buerger exposed himself to great difficulties. Although this incident is most regrettable Farben must decline any responsibility for it; it could not prevent this incident. It certainly would have gladly avoided this incident in the interest of preserving peace among the workers, and of good relations between the plant and employees.

The report about the shooting of an Eastern worker in 1942 shows that the plant police executed the shooting because the respective Eastern worker tried to avoid an ordered control. Insofar the plant police acted as a police agency and not as an employee of Farben. If the plant police performed police duties it was not subordinate to Farben but to the State Police authorities. The whole incident was reported subsequently to Dr. Buerger who was on a trip at the critical moment. Therefore Buerger could not have prevented the incident; after the incident he could not do anything except suggest an investigation. The plant policemen concerned had acted on the ground of directives which were not issued either by Farben or by Dr. Buerger; they were issued by superior police authorities. Also in this respect there is no connection between the act and the behavior of Dr. Buerger. Dr. Buerger cannot be incriminated in any way.

The prosecution obviously wants also to claim that maltreatments of foreign workers occurred. The only evidence produced to this effect is the affidavit of a French worker Rene Balandier. I regret that the court itself did not see this witness but had to depend on a reading of a commission record in order to form a picture of the cross-examination



of this witness. Balandier was a witness who very obviously was more interested in incriminating his former employers than in sticking to the truth. Already his affidavit shows a tendency for untrue generalization. It is difficult to catch a witness who decided to say nothing favorable; this, however, has been done with Balandier in two cases:

Witness at first denied that he had received a special leave pay at any time; he added without being asked that none of his fellow-workers had received such pay at any time either. When the contrary was proved to him by a receipt signed by himself he confined his testimony claiming that he could not remember it any more. Allegedly he had signed the receipt without knowledge of its contents. Thus he only tries to cover his uncontestably false testimony by something seemingly harmless. But not only in this case did Balandier tell an untruth, his testimony about the alleged several hangings in the Russians' camp is not correct either. He had to admit himself that he had seen only once such an execution. He based more far-reaching allegations on the fact only that he had supposedly seen crowds before the Russians' camp, a special sign of this witness' "veracity".

At another point an objective incorrectness can be proved to Balandier, leaving out the question whether he acted in good faith. He complains in his affidavit that French PWs were employed in the production of war material (powder). But powder, i.e., powder for ammunition, was not produced in Bitterfeld at all. In fact chlorates were produced which, though they were supposedly used by the French Navy in the form of perchlorates as explosives during the 1st World War, were used in Germany besides many other uses as explosives only in potash mines.

Balandier's statement in his affidavit and his testimony in cross-examination are viewed by the defense with the utmost mistrust. He is a definitely unfriendly witness and in several points he was not very particular about the truth. No essential weight can be attributed to his testimony. Many of his complaints concern effects of official directives which Farben could not change; thus e.g. regulations

about leaves, travel restrictions for foreign civilian workers, treatment of Eastern workers. Some concern the effects of cohabitation of so many people under restrictions resulting from war, e.g. vermin, which was time and again exterminated but could be avoided only if the camp inmates behaved adequately; also uncleanness in the barracks or in the sanitary installations, and the like.

In opposition to this affidavit which indulges downright in painting in black colors, the defense succeeded, in spite of the most serious difficulties, in getting various affidavits of foreign workers which present an absolutely different picture of camp conditions. I refer with special emphasis to the defense affidavit Lafargue (Buergin exh. 96) who justly stresses the point that the Nazi tendency was a cruel one, but that Farben, time and again did its best to alleviate the lot of its foreign workers and to put them on an equal footing with the German workers in every respect.

I have endeavored to make the evidence for the defense particularly as to this count as extensive and varied as possible. There are among this evidence affidavits of foreign workers, German workers, camp leaders, physicians, persons attending patients, people dealing with food, engineers, and other employees. All these affidavits show that Farben took the greatest trouble to improve the situation of foreign workers within the limits of existing possibilities; it had the greatest interest in this improvement since it wanted to get good efficiency from these workers, and it had to get this efficiency because otherwise it would have come into conflict with the Wehrmacht- and political agencies which requested fulfillment of production quotas. I take the liberty to draw the particular attention of the Court upon one of the many exhibits, namely the defense affidavit Ehrlich (Buergin exh. 98), which for good reasons bears the name of the author Ehrlich, which means honest. Ehrlich's judgment is very sober, but he emphasizes, however, that everything possible was done and that in particular Dr. Buergin advocated again and again a humane attitude

towards the foreign workers. Dr. Buerger, as chief of the plant, which employed at the end appr. 10,000 foreign workers, could not supervise each of his employees. He could only point out again and again the policy according to which the foreign workers should be treated, he could issue the general directives which should be followed, and he could intervene in individual cases, if they were reported to him. In order to do that in the most expedient manner, he appointed a special "referent" for the camps, who was directly subordinated to him. It is, therefore, in my opinion, not fair to punish Dr. Buerger for some individual cases, of which he possibly did not even know, and which he, therefore, could not prevent. May I again refer to the proverb of the old Roman Law: "Minima non curat praetor".

The general attitude shown by Dr. Buerger in the treatment of the foreign workers, is, however, described by a whole series of affidavits and testimonies. I refer, in this connection, in particular to Buerger's continuous fight with the DAF to his endeavour to turn the camps in Bitterfeld into exemplary camps, and to the reputation of exemplary camps which these camps actually had acquired and which was confirmed by the witness Soiron (Krauch exh. 47) ., who was a very impartial observer; to the efforts which were made in order to construct a special hospital for the workers, in addition to the existing facilities, the so-called House of Health, which was, after long efforts, finally completed in the beginning of 1945 and at the same moment destroyed by the first air attack on the Bitterfeld installations. I also refer to the fact that Dr. Buerger succeeded in obtaining the same air-raid protection for the foreign workers as for their German comrades, contrary to instructions by the authorities. I refer to the fact that at the occupation of Bitterfeld through the American troops, no serious objections regarding the conditions were made at their visit of the camp, and no serious complaints were made to them by the foreign workers. I refer, furthermore, to the characteristic incident which is stated in my exhibits No. 40, 41: An American officer who



had slapped the witness Krueger, when the witness ridiculized at the entering of the troops, the expression "slave laborers", apologized on the following day for this action. The American authorities confirmed Dr. Buergin in his position as plant manager and he held this position until the forced evacuation, before Bitterfeld was handed over to the Russians. Soon after Germany's collapse Dr. Buergin could resume contact with the French firm Pechiney, as a consequence of which he received a permit to leave Germany and to be employed in a French enterprise; these facts also indicate that he is not guilty of war crimes; in particular crimes committed upon French workers, as this would have certainly rendered impossible such an activity.

Occasional incidents are bound to occur at a concentration of approx. 10,000 foreign workers of different nationalities, under the particular hardships caused by the war. This is inevitable. But the policy of Farben and of Dr. Buergin was always a humane treatment, and temporary bad conditions were obviously successfully eliminated, as far as it was possible at all to eliminate them during the war. No serious difficulties which had to be remedied, could have occurred, and there can be definitely no question of a generally inhumane and cruel treatment of the foreign workers in Bitterfeld.

### III.

The collective responsibility of the Vorstand of Farben and, consequently, of each individual member of the Vorstand, will be discussed in a separate statement. I restrict myself here merely to the special situation of my client. Dr. Buergin was the director of an important factory located in the province. He had, particularly during the war, more than his share of work and worries through the factory which was entrusted to his direction. He rarely visited Frankfurt and even more rarely Berlin. He participated in the conference of the TEA and of the Vorstand. In each of these conferences an enormous amount of work was done, and the individual matters had already been worked out

in preliminary conferences, committees, subcommittees, so that there was no more discussion about details. The work was done in an efficient, practical manner and the decisions were reached in an atmosphere of confidence in the integrity of the participants. Each member accepted and carried the responsibility for the department in his charge. This factual handling of the general business of the Vorstand does not offer any basis for an extension of the criminal liability to individuals, in particular not to a man like Dr. Buergin, who directed his plant in the province, at a great distance from the central offices and who was completely absorbed by this task.

I therefore come to the conclusion that Dr. BUERGIN is not guilty under all counts of the indictment. I wish, however, to point out the following:

I already once mentioned briefly the difficulties which confronted the defense in its collection of evidence. These difficulties were particularly great with regard to defendants whose plants were located in the Russian zone. May I refer, in this connection, merely to two examples:

In the affidavit of the former foreign worker Wilda Greuter-Gheffoli which was submitted to the Tribunal as my exhibit No. 97, the affiant states that she did not succeed in finding a Notary Public to certify the authenticity of her signature, because, obviously as a consequence of the animosity caused by the foreign press campaign, nobody wanted to certify her signature on the affidavit.

Several former collaborators of the defendant BUERGIN, who are still holding their former positions in Bitterfeld, informed me some time ago that I had to abstain from requesting any information in the future. These men were obviously afraid to get into trouble, because of the newspaper and radio campaign in the Eastern zone, in case that they gave any assistance to the defense in Nuernberg by furnishing information material.

For these reasons the defense was very interested to get acquainted with the material of the prosecution which had not yet been submitted, not for the purpose of learning of any possible secrets of the prosecution, but in order to establish the, in many cases, necessary connection between the prosecution documents and incidents which occurred before or after those prosecution documents, which were taken out of their proper connection. The prosecution submits, for example, a certain file note for the attention of the defendant BUERGIN.



It does, however, not result from this, whether, as a consequence any steps had been taken and in case it was so, which steps were taken. Or a letter is submitted, which is signed by BUERGIN and addressed to another member of the Vorstand. It does not result from the document why this letter was written, whether any steps were taken as a consequence of the letter and in the affirmative, which steps were taken. A characteristic example is the file note which was submitted to the defendant BUERGIN in cross-examination, which was signed by von der Bey and Pister, according to which BUERGIN was to hold a conference concerning essential and vital plants and armament factories (prosecution exhibit 1959). By a mere coincidence I succeeded to prove through my exhibit No. 100 that actually nothing happened and that neither the meeting nor the conference took place.

The courts often assume that a document speaks its own clear language. I however, do not share this viewpoint. Only very few documents have such clear contents that only one interpretation is possible. Most documents may be interpreted in different ways, they must, therefore, be explained. This interpretation of the documents, which the prosecution itself called its main material, has been rendered extremely difficult to the defense through its impossibility to follow the entire course of incidents. I therefore ask Your Honor to take into consideration this vis major preventing the defense from collecting evidence, which applies particularly to the defendants from the Eastern zone, and, in judging documents which have perhaps not yet been sufficiently explained to the Court and which lend themselves to various interpretations to adhere to the legal axiom:

"In dubio pro reo".

THE PRESIDENT: Dr. Flaeschner, for the defendant Buetevisch?

DR. FLAESCHNER (Counsel for the defendant Buetevisch): Mr. President, your Honor!

Perhaps for the first time in history the industry of a conquered nation is standing trial for having unleashed an international conflagration. It is difficult to ascertain to what extent the prosecution wanted to indict the whole of German industry. In many cases they selected the I. G. Farben industrie, an enterprise of the large chemical industry, as the symbol for their purpose. According to the theories repounded by the prosecution, I.G. Farben is supposed to have presented its production, its research and development endeavors, its sales organization, its international agreements and its trade and sales propaganda to the Nazi government on a silver platter in order to enable HITLER to wage aggressive warfare. This is truly an audacious theory! I.G. Farben is bound up in a history and a tradition. He who wishes to appraise its organization and its position in the world economic structure must study this history.

The prosecution did otherwise. From the millions of letters, memoranda and records of the I.G. Farben it made a selection of a fraction of a percentage of these documents congruous with its theory and with these painted a disturbed picture of the I.G. Farben based on preconceived ideas. It has attempted to associate the details the details as set forth here, which for the I.G. were of completely secondary importance in relation to their overall activities with political acts and thereby led both the defendants and defense through a labyrinth of inconceivable aberrations and confusion.

Thus it is perforce the task of the defense, jointly with the defendants, to find a way out of this labyrinth in order to acquaint the High Tribunal with the facts, and to prove that this distorted picture of the prosecution concerning I.G. may serve to indicate many things, but certainly not the truth or the actual facts.

From its collection the prosecution has raised an abundance of individual charges, and made its work easy in so far as it has adopted the viewpoint that each of these persons on trial here is to be held responsible for such acts as charged.

it has attempted to impose a collective responsibility on all of the defendants which is devoid of any legal basis. In order to be able to hold each and every one of the defendants responsible, the prosecution must disregard the maxim which is contained even in the indictment, namely, that every criminal guilt is an individual guilt. In the course of the trial it must certainly have become clear enough that the division of work in the management of I.G. was so differentiated that it is impossible to hold all the Vorstand members and these men holding leading positions in this concern equally responsible for all spheres of work. If the laws relating to stock corporations in the case of a Vorstand consisting of many members imply, in sharply delineating the spheres of duties, a total responsibility as regards all liabilities, as prescribed by law, only to those duties to which the law designates expressly as general duties of the Vorstand, then in the case of criminal responsibility an even more critical standard must be applied which requires much greater differentiation with the result that for each of the defendants the extent of his activities, the extent of his responsibility, demands particular reconsideration.

Proceeding from these points of view I shall deal with the allegations and evidence of the prosecution in so far as it falls within the competency of my client, Mr. BUETEFISCH.

In 1920 Mr. BUETEFISCH entered the services of the I.G. Farbenindustrie and rose from a simple chemist to the position of the technical director of the Leuna-Werke. During the entire period of this professional career he occupied himself with research and development work with the technical execution and supervision of production tasks as well as technical and organizational problems. The synthesis from coal with the chief products nitrogen, methanol and petroleum, comprised his actual sphere of work. But even in the development and research work in these three fields of synthetic production the prosecution has found an indictment count from the criminal activities of the I.G. Farbenindustrie and Dr. BUETEFISCH.



It is difficult to follow the theory of the prosecution and its charges for these three types of production had been carried out by I.G. even before National Socialism came to power. I.G. developed conscientiously and in accordance with its old tradition the products of these three new syntheses and turned them over for industrial consumption, and further worked tirelessly and then in order to develop even more types of products from these chief products which were to benefit industry in general, agriculture and transportation. Such activity is certainly conducive to increasing the industrial might of a nation, but can it be associated at all with considerations alien to industry, perhaps political considerations?

From the standpoint of logic such a view could be carried to its ultimate conclusion, namely, that a technician would have to refrain completely from the execution and development of such processes which are capable of increasing the industrial might of a nation. Even this consideration indicates that the premises from which the prosecution has proceeded are erroneous. Such development has taken place in every modern industrial nation of the world. It was not Germany or the I.G. which achieved new production capacities in the last decade in the fields of nitrogen and methanol, but foreign countries took up the achievements of technical science as developed in Germany and constructed their own plants in order to attain autarky.

To avoid repetition I do not wish to discuss these two products and their use any further since they have already been handled as products of aparte I by the defense counsel for Dr. SCHNEIDER. However, in any case I must emphasize as far as my client is concerned that his duty in the development of these syntheses consisted in creating new types of fertilizers from nitrogen and in the field of alcohol synthesis of opening up new fields for the use of these materials in the fields of synthetic textiles and solvents. Dr. BUETEFISCH was no explosives chemist, he concerned himself only with the manufacture of products for purely industrial consumption.

How the prosecution wishes to infer from this activity of my client a violation or a crime according to any existing law in the world beyond my powers of comprehension.

The prosecution regards the fact as particularly incriminating that I.G. obtained petroleum synthetically from coal. It submits documents which purport to prove that the development of these products by I.G. can be traced back to some sort of alliance with HITLER, that agreements had been concluded with the Nazi government in order to enable I.G. to make huge profits, and that special products in the petroleum field had been developed by the I.G. for the Wehrmacht to prepare the latter for an aggressive war.

The defense's case-in-chief has punctured holes in every point of this theory of the prosecution. Gasoline production was initiated by the I.G. in 1927. Contract negotiations with the Reich were started already in 1932 under the Bruening government out of purely economic and commercial considerations and concluded by veteran officials of the Bruening regime. The very opposite to an enrichment of the I.G. was a result thereof. The prosecution was unable to submit any proof to substantiate its theory of an alliance with HITLER. The defense's evidence makes it perfectly clear that the further development of production was based purely technical results. But the prosecution has even made an issue out of this point. It alleges that Dr. SUBTEPISCH and thereby all of I.G. Farben should have recognized the criminal intent of the Reich government to wage an aggressive war through the development of production which was to be carried out under strict secrecy, and which promoted by the releasing of the license for the hydrogenation process. On this point as well as the facts which have been produced by the defense contradict the theory of the prosecution.

1.) Up until the outbreak of war the whole of German production was marked for the normal commercial consumption and absorbed by the market without any trouble.

- 2.) This peacetime consumption up to 1939 had more than doubled in Germany in comparison with the figures for 1933.
- 3.) Imports of petroleum in 1939 increased two-fold over import figures for 1933.
- 4.) Domestic production was not sufficient enough to cover even half of the peacetime requirements.
- 5.) German plant installations were not secret. Foreign countries such as America and England participated in the organization of production of synthetics in Germany.

If the prosecution wishes to submit that the activity of I.G. in the field of synthetic fuel production constituted a promotion of military armament for the conduct of aggressive wars, then in substantiation of its opinion it cannot take recourse to the agreement between the Kammiswerk Merseburg and the National Air Ministry concerning the supplying of aviation gas, for the National Air Ministry represented the interests of both civil and military aviation in Germany in the very same manner, and the gasoline supplied was nothing more than a regular basic gasoline for transportation vehicles.

However, the prosecution believes that the production of special products in the field of petroleum is indispensable for the waging of war and that first-class technicians of I.G. in this field first put Wehrmacht in a position to wage aggressive wars. No more cogent counter-evidence has been presented than that submitted by the defense in opposition to this argumentation. It is quite true that in 1939, too, a sufficient supply of petroleum would have constituted the prerequisite for a war, especially a war of aggression, but even more sufficient quantities of high-test gasolines which are the decisive factor for the striking power of an army, and above all for air force. Isokontan was this high-test gasoline which had been manufactured in America since 1936. The final stage of its production was carried out following an I.G. process which had been given to the Standard Oil Co. in 1935 as a part of exchange of experiences.



The I.G. too could have manufactured this product but it would not have been economical. Germany lacked raw materials which America had in abundance. I.G. was unable to obtain this product only through a roundabout process using alcohol. The Wehrmacht learned of the possibilities of the use of Isooktan for special aircraft and naturally turned to I.G. with the question whether it could not obtain this product. Dr. BUETEFISCH had to answer in the affirmative. He emphasized, however, that the production of this product in Germany was not at all economical at that time and that the I.G. therefore would, have to refuse to initiate any production of same. Dr. BUETEFISCH believed in a peaceful development of technical science and sought other chemical syntheses which would increase the possibility of an economical utilization of this process from German raw materials although Dr. BUETEFISCH was aware to what a great extent aviation gas had already been produced in foreign countries. An Isooktan installation using the alcohol process was not constructed. Would such an attitude of Dr. BUETEFISCH have been possible if he had had the slightest suspicion of war?

The last but very cogently propounded argument of the prosecution concerning the members of the I.G. in the preparation of an aggressive war is the claim that the I.G. through its cartel policy had weakened the potential of its future enemies in the petroleum field in a cunning manner through the withholding of experience exchanges expressly agreed upon. Since the technical development of the petroleum field and the concomitant exchange of experiences constituted my client's chief sphere of work and he was held to account directly by the prosecution, I am forced in judging my client to consider his conduct on this point and to select briefly a few striking features from this field.

The I.G. never considered the synthesis for production of petroleum through hydrogenation as a purely German problem, but as a problem embracing the whole of international industry. In this field the president of I.G., Bosch, and the president of Standard Oil

concluded the agreements on the basis of closest cooperation and in this spirit Dr. BUSTEPISCH dedicated his work to this aim. The research work was supposed to be of great importance for these very countries rich in natural petroleum.

An uninterrupted flow of experiences, patents and processes went to the Standard Oil to America from I.G., which did not cease until the year 1939. I.G. could no longer expect to receive any more new processes from Standard since coal liquefaction was non-existent in America and Germany had little or not natural petroleum.

Nevertheless, the experiences of the American natural petroleum experts were of great importance; they resulted in ever more suggestions in the oil field and thus this exchange of experiences extended to a close cooperation in the extensive field of petroleum. New processes for the obtaining of lubricating oil, high octane gasolines, toluol, isooktan and others were turned over to the Standard Oil, oftentimes before any kind of production of these products had been taken up by the I.G., yes, often even when the process was still in its embryonic stages of development in the I.G. laboratories. There was not a single process in the petroleum field that was developed by the I.G. which was not made available to the Standard Oil during the entire duration of the agreement.

The productive result of this cooperation brought about a mutual desire to extend this field of work still further. Thus in 1938 the hydrocarbon synthesis agreement came into existence and in 1939 the catalytic refining arrangement. These agreements were concluded by Germany for I.G. on the instigation and through the initiative of Dr. BUETEFISCH's aim was a further field of technical collaboration for decades to come. Therefore the exchange of experiences was introduced. Even before any kind of production in the field of hydrocarbon synthesis was taken up by I.G. The latest research results in this field were turned over to Standard on



Dr BUETEFISCH's initiative. In the field of catalytic cracking the "fluid catalyst" was turned over even while it was still in its development stages. In July 1939 Dr. BUETEFISCH sent his representatives to America to discuss the new plans for an installation in Ramburg which the Standard and I.G. wanted to develop. According to the new process of catalytic cracking using heavy natural petroleum as a basis which the Standard was to export.

In the letter, which had to be sent to the authoritative offices for travel permission, it states that gentlemen are forbidden to divulge any military secrets. That is the only thing which the prosecution was able to read out of those connecting factors. Construction of this installation was not carried out because the war broke out.

Could Dr. BUETEFISCH have tackled the technical problems and their universal use with such eagerness in this way if he had known of a war of aggression? But Dr. BUETEFISCH did not believe that a world-wide conflagration would break out. Conscientiously believing that an industrial-technical understanding would work against the spreading of a war he held firm to the idea of exchanging experiences. He was strengthened in this belief as a result of a conference which his closest colleague, Dr. RINGER, had with Mr. HOWARD in the Hague.

The conditions permitting any type of intercourse with foreign countries had been made very strict by the party and military offices. Nevertheless Dr. BUETEFISCH tried to secure permission for the continuance of the exchange of experiences as mutually agreed upon. Germany was not at war with America. He made known his desire at the beginning of February 1940 to General THOMAS and the latter advised him to write a memorandum in such a way that he would receive an

affirmative answer from GOERING to report the matter. As Dr. BUSTEFISCH in order to obtain the permission, uses the words in this memorandum that only well-known or technically obsolescent processes are to be exchanged, the Prosecution believes itself forced to infer from this certain tactics used by the I.G. Farben in the cooperation with Standard Oil. And yet clauses which expressly made it possible for each separate firm to consider the particular conditions of their respective countries had been included in the agreements by the contracting parties. This memorandum was written in 1940 during war time. It is here interesting to notice that Standard Oil was the first party that had to impose restrictions on the communication of certain experiences in order not to give away technical information of military importance. Does the Prosecution really believe that American engineers and chemists could have let themselves be taken in by their German partners for years? In the case-in-chief it was demonstrated how the exchange of experiences took place.

Every year in the laboratories and in the experimental plants and in the industrial plants of the I.G. Farben highly qualified chemists and technicians from Standard Oil and other partners studied the I.G. Farben sent every year similar experts to the States to Standard Oil and the other partners. In view of these facts, how is it possible at all for the Prosecution to assume that the I.G. Farben withheld essential procedures from its partners?

The spirit governing the members of the I.G. Farben Vorstand who are the defendants in this trial, in the implementation of the exchange of experiences is demonstrated most eloquently by testimonies of the foreign partners. Whereas the Prosecution as already mentioned was unable to state one single concrete case of withholding of experiences

in violation of agreements, it was on the other hand possible for the Defense, through witnesses whose expert knowledge and competency are indisputable, to establish a proof showing which extremely valuable procedures bringing about an actual revolution of the production of the American petroleum industry, were communicated by the I.G. Farben to its partners, procedures which, as it was later found in the course of the development of the entire wartime economy, were of decisive importance.

A defense counsel can outline the over-all attitude and reactions of his client to the High Tribunal only on the basis of individual acts. In my evidence I included excerpts of a lecture given by Dr. BUETEFISCH on 11 May 1939 before the German Academy for Aeronautical Research on the subject: "On the Chemical Constitution of Fuel and Lubricants".

According to the theory of the critical time described by the Prosecution, one should have assumed that Dr. BUETEFISCH must necessarily have tried anxiously to keep the secret of his results and ideas for improvement of fuel. The opposite is revealed by the contents of the lecture. Dr. BUETEFISCH approaches his problems from the viewpoint of world economy and suggests the cooperation of all experts. This basic attitude of Dr. BUETEFISCH is, particularly in 1939, further substantiated when as promoter of the Fourth World Petroleum Congress, which by resolution of the nations of 1937 was to take place in Berlin 1940, he in August 1939 accepts the task of delivering a main report on technical problems of the petroleum industry.

Is this action of a man who, as alleged by the Prosecution, was aware of the planning of a war aggression by HITLER, who is supposed to have participated in a conspiracy



supporting this plan, and who for this reason wanted to weaken the war potential of his future enemies? If this theory developed by the Prosecution was correct, then in any case, as far as Dr. BUETEFISCH is concerned, proof would have been established that in his field of work he worked against every possible entanglement that might lead to war with all possible means and tried every way imaginable in order to further the peaceful solution of the problems of world economy in the exchange of technical experiences through honest understanding and cooperation.

But another thing appears from the lectures and work of Dr. BUETEFISCH. He did not find gratification in the highest possible figures of tons of kilograms achieved by the syntheses under his technical supervision, but he penetrated into the depths of the combinations of scientific and technical problems through an arduous study of pertinent literature in order to draw new ideas from these sources and to be able, based on his own abilities, to contribute his share to the marking out of new ways for the strating of production of still better and more valuable products for the benefit of the entire human race.

Therefore it is no wonder that Dr. BUETEFISCH as a technical expert in his field was consulted by many offices even outside his own firm. Whether it was the international nitrogen convention that elected him president of the technical committee, whether it was the Brabag, the Poolitz or Linz Plants, the nitrogen syndicate, the Gobecken or the Economic Group (Wirtschaftsgruppe) that asked his technical advice, it was always technical questions on which he was asked to give advice.

I believe that the result of the case-in-chief without

exaggeration can be summarized to the effect that in his field of chemical research and development and in the technical utilization of the results of the research work for the production Dr. BUSTEFISCH was a recognized authority who did not allow himself to be guided by political points of view in his work, but who at all times was governed by practical and professional points of view only.

I shall now deal with Part II of the indictment, in which the I.G. Farben and the defendants in this trial are charged with looting and spoliation as defined by Article II of Control Council Law No. 10.

As to the basic legal questions I refer to the expositions set forth by my colleague SIEMERS in his previous final plea, and I shall confine myself to the concrete charges preferred by the Prosecution in connection with the participation of the I.G. Farben in the Kontinentale Oel A.G. was founded on the initiative of the Reich Ministry of Economy and already prior to the outbreak of the war with Russia. The petroleum industry of Germany and various banks were called upon to participate. The subject of the enterprise was the taking over of participations any any other commercial activity in the fuel field, in particular in foreign countries. In the company the Reich held a position of absolute predominance whereas the I.G. Farben participated only with 3.75% of the capital stock; as I.G. Farben expert of petroleum questions Dr. BUSTEFISCH must, of necessity had to become a member of the Aufsichtsrat, which consisted of 28 members and already because of the coporational law existing in Germany could by no means claim to be of decisive importance. After the beginning of the Russian campaign the business management of the Kontinentale Oel A.G. in pursuance of a decree of the Reich Minister of Economy FUNK had to take over special tasks in the occupied Russian territories, of which the Aufsichtsrat was not informed until subsequently at a meeting in January 1942.

Quite apart from the fact that according to German law neither the partners nor the members of the Aufsichtsrat can be charged with any responsibility for the said measures, in particular since in this case they

were initiated by special official instruction and, therefore, as the effect of the existing war time laws had to be carried out, the evidence introduced by the Defense has shown that the activity of the Kontinent le Oel A.G. in Russian did not violate Control Council Law No. 10. That means that in this case this activity constituted neither looting nor spoliation. Therefore, in this case any client cannot be convicted of any culpable act either.

Then the Prosecution in this connection referred to the conviction of Minister FUNK in the IMT Trial, thereby emphasizing that in his judgment mention was also made of his activity in the Kontinentale Oel A.G., I reply to this that FUNK in his capacity as minister and because of his special powers held a position fundamentally different from that of the Aufsichtsrat so that no comparison can be made in this respect.



7 June 1948-M-DJC-7-1-Primeau (Garand)  
COURT VI, CASE VI

THE PRESIDENT: Counsel, I will have to interrupt you  
for our morning recess. The Tribunal will rise for fifteen  
minutes.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

DR. FLAUCHSNER: The theory of the prosecution that the taking over of equipment parts from the nitrogen plant Sluiskil by the nitrogen plant Ostmark A. G., in which Dr. Buete-fisch was president of the Aufsichtsrat, constitutes looting and spoliation, is likewise wrong. My evidence shows in this case in particular that this was indisputable carried out in pursuance of a government order which the company and especially Dr. Buete-fisch tried in vain to resist.

Linz had to cancel its orders on hand with German firms and take over the equipment removed from Sluiskil and assigned to it. The Reich Ministry of Economy or the Wehrmacht undertook the financial settling of accounts with Sluiskil; Linz as purchaser of the equipment had nothing at all to do with Sluiskil but had to resort to the said authorities.

Under Count III of the indictment the I. G. Farben and thereby all defendants are charged with participation in the government program of slave labor. A number of my colleagues have already in their final pleas stated their views as to the various theses on which the Prosecution has based its charges.

In order not to succumb to the danger of repetition I shall, based on the evidence referred to, deal only with the question whether my client Dr. Buete-fisch can be charged with a responsibility within the I. G. Farben for the utilization of labor. After the detailed explanations of the defense counsel of Dr. Schneider and the statements concerning the divided responsibility of the Vorstand, it has become quite clear that the plant manager was responsible for labor matters and for the social care of the factory staff according to the law for regulation of national labor at that time existing in Germany.

In the course of the case in chief the plant managers responsible for the respective plants have expressed their opinion on the various counts of the indictment and were able to prove the

irreproachable attitude of the I. G. Farben as a whole in all cases.

As leading technician of Sparte I Dr. Buetafisch in the course of his 25-year activity was never manager of a plant. I have already in the introduction to my statements described the comprehensive technical tasks which Dr. Buetafisch had to take care of in the various plants. As leading technician of Sparte I he was in charge of the technical management of the Leuna Plant, conducted the technical operations at the Moosbierbaum Plant, further he issued the technical instructions for the plants of the Braunkohlen-Benzin A. G., he became technical adviser for the Politz and Linz plants at the request of the stockholders, and besides he was entrusted with the direction of many technical committees and the implementation of the exchange of technical experiences.

The main task, the technical management of the Leuna Plant, which was the largest plant of the I. G. Farben concern, did not allow Dr. Buetafisch to visit the other aforesaid plants for more than short periods. But the manager of a plant is bound to the place of his plant. He must be near to his plant; otherwise it will not be possible for him to concern himself with the details that are the most essential part of the social care of the factory staff. In all labor questions he must maintain contacts with local authorities. But he must also be familiar with the legal provisions of labor laws and of social care and in wartime with the problem of labor allocation, in particular the employment of foreign workers and compulsory labor. All these problems did not come within the field of work of Dr. Buetafisch. He was not supposed to deal with them.

In order to fulfil his duties he was forced to concentrate entirely on the technical problems, which appear every day in the production of a plant and in the planning of new establishments. But this is not to be interpreted as if Dr. Buetafisch had not been interested in the living and working conditions of the factory



staffs. That would be to fail to appreciate his work which again and again took him into the plants in order to intervene whenever difficulties of a technical nature appeared. His loyalty towards the workers is most clearly characterized by the testimony of one of his oldest plant foremen:

"Foremen and workers soon became acquainted with him and learned to appreciate him for his cordial behavior, because in the plant he never shrank from giving a hand in any work. He was always on the spot whenever there were any difficulties in the plant and in dangerous situations always led the way by setting a good example."

These plain words of a simple man clearly characterize the responsibility of a technical chief. No authority relieves him of this responsibility; he has to bear it all alone, for he issues the orders necessary for the technical management of the plant. He is responsible that the technical planning of new establishments does not result in catastrophes when the plant is put into operation. He is also responsible under criminal law that the enormous powers bound in his chemical plant, confined in containers, pipe-lines, boilers, and armatures do not result in danger to or even loss of human lives.

In the utilization of the synthesis in the plants under his care the workers are working with high pressures, high temperatures, and explosive gases. The leading technician is responsible that all rules of procedure of his science are observed in the planning as well as in the plant itself, so that no accidents will occur which due to the special nature of modern large-scale chemistry can only too easily assume the character of a catastrophe. This work also had to be carried out in the I. G. Farben. It could be carried out by technicians only who were fully versed in their specific fields. One of these technicians was Dr. Buetefisch.

The Prosecution was unable to produce one document to show

that human lives were endangered in the I. G. Farben through the fault of the technical management. From this it appears what precautions were applied by the technical management, in particular, in this respect, and it is impossible to accuse the management and Dr. Bueterfisch in particular, of having ever risked human lives in the plants. To a technician it makes here no difference whether native or foreign, whether free or unfree workers are concerned. Thus also for Dr. Bueterfisch the care of the safety of the worker was a primary one. He did not want to work his men to the bone, but wanted to interest them in their work and keep them interested. It is incomprehensible if now according to the theories of the Prosecution Dr. Bueterfisch should have participated in the enslavement of human beings and through abnormal, slave-driving working methods have caused the death of such persons.

As a special case to prove this the Prosecution refers to the setting up of a new plant in Auschwitz. The entire argumentation of the Prosecution with regard to this point aims at using the Auschwitz concentration camp, to stage its play; the I. G. Farben is alleged to have demanded the productions of this plant on its own initiative and to have selected the building site for this purpose because there was a concentration camp in this place, the inmates of which it intended to use for the building of the plant.

This theory of the Prosecution should not be allowed to pass without comment. In the trial against Friedrich Flick et al before Military Tribunal IV it was already examined in detail what remained of the alleged initiative of the entrepreneur during the war in Germany. In the case of Auschwitz the findings reached in the said trial appear to me to have a particular relevancy. Thus my colleague Kranzbuehler stated the following facts:

"Already in the infancy of the Third Reich the change from the liberal economic body to the state-controlled system of production was completed. By means of this plan the all-powerful

National Socialist Government placed private enterprise to a large extent under custody. The final stage of this development was then reached in the total wartime economy which left the initiative of the entrepreneurs no freedom of action, placed the production plants completely under the control and dictation of the government and ordered criminal sanctions in the event of violations against this system of production under authoritarian control. The time of the production and construction programs was inaugurated when tasks were assigned to plants by government authorities."

The Commodity Exchange Regulations of 18 August 1939 constituted the legal basis for the enforcement of government assignments subject by penalties of imprisonment. The War Economy Decree of 4 September 1939 coined the concept of national economy under war obligation and threatened with death penalty as punishment for jeopardizing the vital supplies of the population as determined by the government. The plant - not the company - is placed at the lower arm of this enormous lever as ultimate executive organ. An analysis of the charges preferred by the Prosecution in the light of established facts results in the following findings considering the extensive evidence:

- 1.) It was not the I. G. Farben or even one of the defendants that demanded the setting up of a plant in Auschwitz but government authorities (the OKW) demanded and ordered the building thereof.
- 2.) Supplies were procured and labor made available through government agencies. The I. G. Farben had no influence thereon.
- 3.) Utilization of workers including prisoners was decreed by order of Goering and Himmler.
- 4.) The speed of the construction work and the deadline for completion of the plants were determined by government authorities exclusively.



How under such a system of state control private initiative of the industrialist and therewith personal responsibility could still play a role, remains a mystery. The industrialist was simply pressed into a scheme of state authorities and merely had to execute order.

Sparte I received its construction order for Auschwitz after the place for the construction of the plant had been fixed. The presence of the concentration camp had nothing to do with the planning of the plant of Sparte I, which was started after the order for its construction was received and, therefore, was never mentioned during the preparatory work. The assignment of prisoners in addition to other workers on the building site developed perforce from orders of Himmler and Goering.

The prosecution characterizes the conference which took place at the office of Obergruppenfuehrer Wolff as an initiative-action of the defendant Buetevisch for the procurement of prisoners as workers for the construction site. This very conference, during which, as was proved by the case in chief, only questions of a general nature and of an informative character were discussed, shows clearly how such an event develops perforce from such orders.

Also the discussions, in which Dr. Buetevisch did not participate and in which details of the commitment were fixed and agreed upon between the I. G. Office in Auschwitz in charge of the construction and the administration of the concentration camp, are only natural consequences of the issued orders and the therein fixed deadlines for the construction project. Neither the I. G. as an entity nor the office in charge of the construction, nor Dr. Buetevisch cherished the idea of the labor commitment of prisoners.

The construction office tried everything possible to obtain other workers. The prisoners were used only, when it was not possible to circumvent the order because there were no other workers available, and even then everything was attempted in order to create

bearable conditions.

However, the prosecution tries to incriminate the defendants for these very measures which were carried out by the office in charge of the construction in agreement with the management of the I. G., in order to improve the situation of the prisoners committed for work. When the office in charge of the construction set aside barracks at Maniwitz for the accomodation of prisoners, it was never its intention to establish a concentration camp; on the contrary, it wanted to bring about a separation of the prisoners committed for work at the construction site from the concentration camp Auschwitz itself, in this way the prisoners were taken out from the atmosphere of the concentration camp itself, the weary march to the places of work was avoided, and the danger of a spreading of an epidemic was obviated. By taking charge of the food supply for the prisoners working on the construction site, they wanted to have control of their rations, and it was possible to procure even additional rations for them.

The difficult war conditions during the construction project in an Eastern territory with a low standard of civilization were considerable with regard to the care of the workers. The office in charge of the construction could not select its workers. It had to take whatever workers were assigned to it. Accommodation had to be found for them. In addition, not only the I.G. alone but far more than 200 other construction firms with their own managements were active at the construction sites. All this has to be taken into consideration before a judgment as to the treatment of the workers can be formed.

The prosecution intends to make the I.G. responsible for everything which happened at the construction site and in the living quarters and even in the concentration camp Auschwitz itself, without even trying to investigate to what an extent the office in charge of the construction could have been informed about such conditions, and whether it was able at all to exercise any influence on them.

Is there any reason prevalent which would indicate that the basic rules according to which the workers at Auschwitz were treated differed from those in practice at other plants of the I.G.? The best and most experienced technicians and construction heads were assigned by the Sparte chiefs to take charge of the construction and the installations of machines at Auschwitz. In line with the I.G. tradition they tried to introduce fair and decent treatment of all workers also at Auschwitz. Every kind of maltreatment, beating or slave-driving at work, was strictly prohibited by orders of the management, i.e. by the office in charge of the construction.

It shall not be denied that due to the immense size of the plant site and in view of the great number of workers assigned to it, some abuses may have occurred. Such incidents cannot be avoided in construction jobs of such a size. However, if such excesses had occurred systematically or were committed habitually and if this would have led to unbearable conditions at the construction site, then they would have been stopped at once by every agency of the I.G. which would have



learnt of them. The defense's case in chief has proved that the local management or office in charge of the construction energetically intervened in any single case of an excess and took care of its redress.

It is not my duty to dwell here on every single charge of the prosecution. It was not a part of Dr. Buete-fisch's duties to supervise the construction or machine assembly and to supervise the drafting and execution of directives concerning the treatment of workers. This clearly belonged to the sphere of duties of the local management. Dr. Buete-fisch did not hire or fire a single worker during the time of his activity of more than 25 years. He had no disciplinary authority and was therefore not entitled to issue directives concerning wages, food supply, rewards or punishment of workers. According to law, this was not only a privilege of the plant leader, but belonged also to the specific sphere of duties of the persons assigned for such tasks, whereas the task of Dr. Buete-fisch consisted in the carrying out of technical planning of the Launa division of the plant in its larger outlines, without his having to be active at Auschwitz himself.

In view of these facts, is it feasible that my client, Dr. Buete-fisch, can be charged with a culpable conduct insofar as he was engaged in the planned construction at Auschwitz and as far as he, in his capacity as a member of the Vorstand of the I.G., had to bear a general responsibility for it?

With regard to the charge of participation in a general program of slave labor, my colleague Dix II has already interpreted the opinion of the defense on this subject on behalf of the Vorstand of the I.G., whereby I want to point out expressly that the foreign workers as well as the prisoners, according to the available voluminous evidence of the defense and contrary to the assertions of the prosecution, were utilized at Auschwitz only for such jobs, which were carried out also by other, free, German workers, that, therefore, the term slave labor cannot even be applied for that kind of work performed by the prisoners.

It might be possible to construct a culpable conduct of Dr. Buestefisch also if he, as Chief of the technical planning and as member of the Vorstand of the I.G., would have neglected his general duties of supervision, or if he would have tolerated improper conditions reaching beyond the stage of individual cases of excesses, in other words, if he would have tolerated unbearable conditions although he had knowledge of them.

The evidence has proved that Dr. Buestefisch had himself informed by the engineers and chemists in charge, who were assigned by him and by the sparte-management, concerning the conditions on the construction site. He personally attended only a few meetings of the construction conferences in order to supervise the technical instructions which he had issued. However, the production chief of Leuna, Director Dr. v. Stalen was assigned as his permanent deputy for this particular field of duty. It was possible for Dr. Buestefisch to visit the construction site at Auschwitz only once or twice a year, in order to inform himself on the spot about the progress of the work. On such occasions he never observed any kind of improprieties with regard to the treatment of the workers. He was obliged to forego these visits in 1944 because, due to an order of the Ministry for Armament and War Production, he had to act as a technical advisor in the fuel plants of West and Central Germany, which were destroyed by air attacks. Leuna alone had to endure 23 of such large scale attacks.

Moreover, all the executives were entrusted with the supervision of the construction of the Leuna division of the Auschwitz plant. Dozens of visits and inspections of the Auschwitz plant were made each year by these officials, and not one of the experienced engineers and chemists found cause to report to the sparte-chief Dr. Schneider, or to Dr. Buestefisch, about improprieties with regard to the treatment of workers. The members of the technical commission of the I.G., the chief engineers of the firm, inspected Auschwitz twice. The Industrial Relations Inspector, numerous other authorities, the Gebechem (General

Plenipotentiary for Special Questions of Chemical Production) and all other experts who visited Auschwitz asserted that the treatment of the workers, including the prisoners, did not give cause to objections. Should all of them, including the plant management and the leading officials of the I.G. have shut their eyes or looked away if some unpleasant incidents occurred or were they not experts enough for questions of that kind?

I believe that the key for the answer of this question can be found in the fact that isolated cases of excesses, which sometimes became not even known to the local management, were exaggerated by stories talked about among the prisoners and prisoners of war, themselves, therewith creating a picture which no longer bore any resemblance whatsoever to the truth. In addition, the conditions in the main Auschwitz concentration camp into which the plant management, and even less so the defendants, could have had any insight were wrongly tied up with the conditions prevailing the construction site of the I.G.; In other words, subjects were linked together which ought to have been strictly separated.

The prosecution even goes so far as to connect the defendants with outrages committed in utmost Secrecy behind the heavily guarded barbed wire fence of the concentration camp. Dr. Bueteifisch, whose residence and main field of activity was more than a day's journey away from Auschwitz, was neither aware of alleged inproprieties as to the treatment of workers, nor, as the prosecution tries to assert, of any kind of atrocities committed within the Auschwitz concentration camp.

In order to prove that Dr. Bueteifisch was nevertheless informed about individual incidents which happened at the construction site, the prosecution put before him in his cross-examination weekly reports, made up in Auschwitz. The witness FAUST, who had made up most of these weekly reports, testified about the importance and the purpose of these reports. Further complete reports of that kind were introduced



in the case in chief for Dr. Duerrfeld. I believe that in all fairness one could not expect that Dr. Buete-fisch, in view of his many duties, personally studied these reports, although his name is mentioned on the distribution list.

The construction reports and, even less so, the weekly reports never came to his attention. He was informed by the main expert advisors only then, when technically important decisions had to be made. Moreover, one can see just from these construction-journals that in addition to many technical details some excesses which occurred at the construction site, were reported whereby it becomes clear at the same time that this concerned only isolated cases which were immediately investigated and stopped. Thus, Dr. von Stalan reported once to Dr. Buete-fisch, doubtlessly on the basis of such a weekly report, that prisoners were beaten up by Capos. However, he was able to report at the same time that the plant management at once protested against such abuses and that all precautions were undertaken to prevent excesses in the future. The case in chief of the defense has proved that the management of the I.G. was constantly endeavored to secure a proper and decent treatment for all workers. The prosecution was not able to produce a single exhibit which could prove an improper action of Dr. Buete-fisch with regard to the entire scope of labor commitment punishable according to criminal law.

The prosecution characterizes as a further crime the participation of the I.G. in the Fuerstengrube G.m.b.H., for which concern Dr. Buete-fisch acted as the chairman of the Aufsichtsrat on behalf of the I.G. Already during the introduction of the evidence concerning this count of the indictment, the defense referred to the legal aspects which make such material inadmissible according to legal precepts.

I refer to the judicial interpretation rendered there and especially also in the petition of 20 November, which I do not have to repeat in detail. The prosecution believed that it would be able to invalidate these legal aspects by the affidavit of the business manager of the

Fuerstengrube G.m.b.H., who in that capacity was also the plant leader, of the above company, in asserting that the I.G., especially in the person of Dr. BUETEFISCH who was delegated by it as chairman into the Aufsichtsrat of the above named company, exerted a decisive influence on all business transactions,

This assertion was completely refuted by the evidence. The business manager Falkenbahn was obliged to concede during the cross examination that the management of the business was exclusively in his hands, and that he was entrusted with the full responsibility for all transactions and that the conclusions which the prosecution drew from its assertion are not justified. However, it is wholly misleading if the prosecution construes the thesis that the I.G. or Dr. Buetefisch were able to exert any kind of decisive influence on the extension or the output of the mine, because these matters belonged exclusively to the duties of the coal mining authorities.

All other events which the prosecution stated in order to substantiate its assertion concern matters which happened inside the plant and which were never brought to the attention of the chairman of the Aufsichtsrat. The jurisdiction and competence of the chairman of the Aufsichtsrat is much overestimated if it is assumed that it belonged to his duties, entrusted to him, to inform himself about individual events going on within the plant itself.

The Aufsichtsrat is not the superior authority of the Vorstand. It is not entitled to issue orders and instructions to the business management. Within the Aufsichtsrat, the position of the chairman is usually equal to that of a chairman of a board. (Kollegium). He is not authorized to represent the Aufsichtsrat in negotiations with outside agencies. His statements are of no significance for the company if they do not confirm with decisions taken by the entire Aufsichtsrat.

Within the Aufsichtsrat the chairman has no superior position. In particular, he has no authorization to decide upon differences of opinion arising within the Aufsichtsrat. That much to clarify the legal characterization of Dr. Buetefisch's position within the Aufsichtsrat

of the Fuerstengrube G.m.b.H., which, as its statutes prove, did not grant any extended authorities to its Aufsichtsrat beyond those provided for by general legal standards.

If now the prosecution believed that due to the special agreements entered into between the partners and alteration of this legal status<sup>st.</sup> was brought about, then this assumption is refuted by the case in chief, especially by the document Buetevisch 313, exhibit 134. The supplementary agreement which the prosecution considers as incriminating offered no possibility for the I.G. or for Dr. Buetevisch to take the initiative with regard to the expansion or the output of the mines. Such measures were entirely up to the coal mining authorities, and the business manager Falkenhahn was obliged to accept their orders.

Therefore, no charges according to criminal law can be preferred against Dr. Buetevisch for events and transactions concerning the Fuerstengrube and its business management; all the less, because not even the leader of these plants, Herr Falkenhahn who appeared here as a witness, had any knowledge of such events and emphatically denies them.



The prosecution considers Dr. BUETEFISCH liable to punishment in accordance with Article III of the Control Council Law of 20 December 1945 for accepting the honorary leadership appointment in the SS, and thus they refer to him as a regular member of an organization declared criminal by the IMT.

In order to assess this charge properly it becomes necessary to explain Dr. BUETEFISCH's attitude towards political life altogether. I have submitted a large amount of affidavits to the Tribunal in which Dr. BUETEFISCH has unanimously been called a man completely unfamiliar with politics. Dr. BUETEFISCH was a technical engineer, and I may well state, without exaggeration, a really passionate technical engineer. He was completely absorbed in his profession and the tasks resulting therefrom, and his spheres of duty covered so much territory that they indeed took up all the energy of this man. Dr. BUETEFISCH was a specialist in his particular field, was acclaimed as such far beyond the borders of Germany and often consulted in this capacity. I have already desired his activity as far as exchange of experiences was concerned, and his efforts to promote chemical synthesis. Because he was so extremely busy in this comprehensive sphere of duties, he had no time for any other matters. However, Dr. BUETEFISCH, the specialist was not confining himself to his specific duties so that he would have ignored all events of everyday life. For instance, he also studied the problems which became predominant when the National Socialists came to power, and many witnesses testified that he was very critical of and opposed to the events which National Socialism brought in its wake.

Dr. BUETEFISCH never engaged in political activities; however, he always was prepared to help as far as was in his power when interferences were attempted and when shortcomings appeared. I would like to mention here as an example that he retained those chemists and engineers, whose dismissal had been demanded by the National Socialist

authorities because of their Jewish origin, as long as possible. Furthermore, I want to mention that he helped those chemists who intended to emigrate who were under pressure from the Gestapo, and that he took measures to facilitate their emigration, as well as making it possible for other chemists to effect their emigration. Dr. BUETEFISCH never sympathized with the National Socialists. He did not apply for membership in the Party until such time when the Nazi district leader called upon the factory managers of Leuna to apply for Party membership. Together with his colleagues Dr. BUETEFISCH then applied for Party membership, but his application, contrary to that of the other ones, was rejected because Dr. BUETEFISCH used to be a member of a lodge.

In 1937, when even the smallest and most insignificant government civil servant had difficulties in getting employment unless he was a Party member, the rejection of an application handed in by a man in such a prominent position meant a tremendous obstacle for him, and it was quite possible that this fact might have forced him to retire from his professional duties which were tantamount to his life work. A person whom the Party had designated unsuitable for acquiring Party membership could not possibly continue in a leading position, and for any length of time in the largest industrial enterprise of the Gau, Dr. BUETEFISCH was fully aware of such repercussions, and as he had personal relations with KRANEFUSS in his capacity as technical advisor of the Brabag, having been a member of the Vorstand of that company ever since 1935, he informed KRANEFUSS, who held a high SS rank, that his application had been rejected. Thereupon KRANEFUSS advised him to try once more to become a Party member by submitting a writ of petition which he, KRANEFUSS, promised to support.

This petition was successful, and in December, 1938, Dr. BUETEFISCH was admitted into the Party. However, although Dr. BUETEFISCH was now a Party member, this did not change at all his

basic opinions. As before, he opposed everything which he considered unwanted interference. For example, when the Party attempted to exert its influence on industrial matters, Dr. BUETEFISCH opposed this move whenever he had a chance to do so. In this connection, I would like to refer to the ROHLITZ case when the Gau leadership tried to exert its influence on that company. Many other examples have been proved in my case-in-chief. Many affiants have also testified to the effect that Dr. BUETEFISCH's criticism as to measures of the political leaders could be very incisive when he disapproved of such measures, and it has also been proved that Dr. BUETEFISCH did not confine himself to merely criticizing things, but that he actively intervened when he had a possibility to do so. Indeed, he did have such an opportunity because of his personal relations with KRANEFUSS, who often intervened upon BUETEFISCH's request.

In this connection, I would like to refer to the case of Professor GERLACH, among others. In Spring 1939, KRANEFUSS, who held Dr. BUETEFISCH in very high regard, approached the latter asking him to accept an honorary rank in the SS. By this, KRANEFUSS thought that he could bestow a special honor on Dr. BUETEFISCH. However, Dr. BUETEFISCH himself was not entirely pleased with this idea and thought up excuses for not accepting, which KRANEFUSS did not heed. Dr. BUETEFISCH did not want to offend KRANEFUSS, and now he insisted on certain reservations in the hope that those reservations would inhibit KRANEFUSS to further pursue his intention.

He stated that he was incapable of performing duties in the SS, that he could not possibly swear the required oath, that he had no intentions of wearing a uniform, that he did not want to bind himself to obeying orders, et cetera. On his part, KRANEFUSS, emphasized that Dr. BUETEFISCH accepting an honorary rank meant nothing more than an honor bestowed upon him by the SS, and that this step did not mean that he would have to bind himself to any obligations, and



that it was purely a matter of form. Following this KRANEFUSS arranged that Dr. BUSTEFISCH received a relatively low rank in the SS, which was subject to the usual promotion procedure.

By joining Dr. BUSTEFISCH did not become one of those persons who were designated by the IMT in its judgment as regular members of a criminal organization. The IMT did not define term "regular member". This term will have to be clarified as yet in the course of interpreting the law and in the findings. From the fact that, for example, the IMT exempted certain categories of various members of organizations and stated that those categories were not covered by its findings, shows that in the opinion of the IMT only such persons can be defined as regular members in accordance with the verdict, who were more than merely registered members, i.e., such persons who had any connections whatsoever with the aims and objectives declared criminal by the IMT, even if such connections were of a rather limited nature. However, if personal connections of such persons to the organizations and their aims declared criminal by the IMT can be construed as having existed, this question can only be answered by establishing the fact that such a person can be called a member as laid down in the IMT verdict.

There are considerable discrepancies in the interpretation of the term regular member both in German penal law and as applied in practice by the denazification courts. I mentioned in my case-in-chief a decree of the Bavarian Ministry for Special Tasks in which honorary leaders of the SS are not considered regular members of the SS, and according to which persons are not punished for their membership in a criminal organization both in Bavaria as well as in Hesse in this occupation zone.

THE PRESIDENT: Would you give the reporter the page of your manuscript?

DR. FLAESCHNER: I am inserting something.

THE PRESIDENT: Perhaps you had better repeat it.

DR. FLAESCHNER: There are a number of examples I can cite. For example, that of the former Minister of Economics Schmidt, Staatsrat Schieber, who was in charge of the overall commitments of concentration camp inmates, and who testified here as witness; men who were in uniform in the SS and had the rank of General, and who today are free although they had high, responsible positions in the economy under the Nazi regime.

I now continue with the text:

"In the British Zone a different view is taken in some cases, as has been proved by the verdict (Exhibit 2191) of the Hama Denazification authorities in the case versus Schroeder submitted by the Prosecution for identification purposes."

By way of explanation, I should like to tell the Tribunal that von Schroeder was an Honorary member of the SS, wore a uniform and had the rank of General in the SS, and had connections with Hitler as can be seen from Document Book 91 of the Prosecution.

But even this particular verdict is no basis for a universal application by the denazification authorities, namely that the honorary leaders of the SS are to be considered members and must be punished as such. The above mentioned verdict bases its findings on the consideration that the culpability of an SS member was inherent in his promoting that organization and its objectionable aims. That this point of view coincides with the actual meaning of the indictment against the criminal organizations can be seen from the statements of chief prosecutor JACKSON in the IMT session of 28 February 1946, in which it is explicitly stressed that the motion, to declare certain organizations criminal, was aimed at bringing about punishment for having been accessories before and after the crimes. Also, the verdict of Military Tribunal II in Case IV versus POHL et al., stated as the prerequisite for sentencing SS members because of their membership in a criminal

organization, that such members could only be considered accessories in the criminal activities of the SS by their approval of such acts, and that because of his interpretation, the Tribunal had acquitted four defendants who had held relatively high SS ranks, because a participation in the crimes of that organization, as defined above, could not be proved in their case.

If British Zone decisions brought about minor punishments for SS honorary members in their capacity as members, such verdicts interpreted the charge promotion of the SS by the defendants, because these had been honorary leaders, respected and well known personalities, who had participated in official functions as SS leader, thus furthering the reputation of the SS. Even if such a strict standard were applied, which I think is wrong because of the exemption of the mounted SS from the group of members affected, for example even if such a strict standard should therefore be applied in the case of Dr. BUETEFISCH, it will be impossible to brand this man a regular SS member. No evidence or proof has been introduced showing that Dr. BUETEFISCH had any personal connections to and relations with the aims and objectives of the SS. At no time did Dr. BUETEFISCH actively participate in promoting the aims of the SS. The Prosecution has been unable to prove one single case where such an action of promoting can be shown. If in the winter of 1944 KRANEFUSS approached Dr. BUETEFISCH with the request that the I. G. should also make a Christmas donation for the dependents of SS men who had been killed in action, the relaying of that request to Geheimrat SCHMITZ, who was responsible for such matters, does not constitute a promotion of the aims of the SS. The dependents of SS men who were killed in action received assistance can not be possibly construed as promoting the criminal objectives of the SS.

By joining the SS Dr. BUETEFISCH did not enhance its reputation. During my case in chief I was able to call on many affiants,



even from amongst his most intimate colleagues and assistants as well as from amongst his friends, who were able to testify to the effect that they never knew of Dr. BUETEFISCH's membership in the SS as an honorary leader. Furthermore, it has also been proved that Dr. BUETEFISCH never appeared in SS uniform, and that he even did not own one. Nor did Dr. BUETEFISCH take up or maintain connections with an SS formation or any other SS-Office to ensure personal advantages for himself or his firm from this honorary rank. In its verdict the IMT emphatically pointed out that to declare whole organizations as criminal could bring about gross injustice if the necessary safeguards were not heeded. Amongst others it drafted and promulgated a statement to the effect that the classifications, the sanctions and the punishment should be kept uniform and should at all times dovetail.

I have referred to the procedure and practical work of the denazification courts and various related authorities as established by the occupation authorities in order to prove that in the final analysis the case of the defendant Dr. BUETEFISCH could be adjudged in the same manner as indicated above and interpreted all over the Western German Occupation zones. I am of the opinion that this reminder might also be of use to the High Tribunal.

In judging the question whether Dr. BUETEFISCH should be considered a regular member of the SS, we have once more to deal with the reservations on which he insisted towards KRANEFUSS, i.e.

- a) Dr. Buetefisch was not to be under the command of the SS; thus he was not obliged and bound to obey,
- b) He did not have to perform duties or participate in public meetings
- c) He did not have to wear uniform, and therefore he did not did not have to appear as an SS leader,
- d) He was not sworn in.

All these reservations were respected up to the very end. According to

my opinion they do not permit the conclusion that Dr. BUSTEFISCH is to be considered a member of the SS, for all that remains is the registration on the files as a member, without Dr. Bustefisch personally engaging in the tasks and objectives of the SS.

One point is of particular interest, namely that those parts which refer to the reservations stipulated by him were taken by the prosecution as characteristic features of the SS in the Trial against the chief war criminals, i.e., blind obedience towards the leadership, submission to an iron discipline and power of command, unqualified and unquestioning fighting for the Nazi ideology, and finally the oath of allegiance. In the trial against the chief war criminals the prosecution replied to a question of the court as follows:

"We consider such persons members of the SS who have sworn the oath of allegiance and who are registered in the membership files".

Even in their final statement, the Prosecution stressed before the IMT the decisiveness of this oath of allegiance. All this shows that the various reservations which Dr. Bustefisch asked for and received when he was appointed to his SS rank, are basically in direct opposition to what is generally understood by a regular SS membership. To say that a person was a member of the SS who insisted on such reservations is a contradiction in itself. Besides, Dr. BUSTEFISCH cannot be considered a regular member of the SS for the simple reason that he did not take the oath. However, according to the IMT judgment a member of a criminal organization can be sentenced only

if that person remained a member in the organization although he was aware of the criminal objectives of that organization. The Prosecution did not specify the various criminal acts of the SS of which Dr. Buete-fisch was alleged to have had knowledge, and how he was to have acquired that knowledge. The proof of this knowledge cannot be brought by simply referring to general events. Now, the Prosecution labors under the assumption that, in order to prove this knowledge, all, they have to do is refer to the fact that Dr. Buete-fisch participated in social events of the circle of friends surrounding the Reichsfuehrer SS, to which Kranefuss invited him. Already in the verdict against Flick et al it has been established that this circle of friends did not constitute an association or organization, and that any participation in its diverse social gatherings has no bearing as to a criminal culpability. The evidence has also shown that no blame attaches to the participants of this circle of friends as to definite knowledge of the atrocities with which the SS has been charged, and that such knowledge was not communicated to them.

The Prosecution refers to the announcement about the liquidation of the village of Lidice in order to prove the fact of knowledge, but this cannot be brought in for establishing the proof of such knowledge, according to the opinion of the defense, as there is no mention in this announcement that it was in particular the SS which was responsible for the liquidation of that village. Besides, no proof has been brought at all to the effect that Dr. Buete-fisch knew about this article. If it was published in a collection of pertinent records, which had been operated and compiled by the library of some Farben office in Frankfurt where it was in the archives, this is by no means a suitable way of acquiring knowledge of aims, nor does it necessarily imply that Dr. Buete-fisch did know about these events. Amongst other things, the Prosecution has submitted the obituary of Kranefuss for Heydrich, which the former was said to have held in a circle of friends, and claims that this would constitute



proof of the knowledge of criminal objectives, However, in this respect it must be said that there is certainly no great inventive genius at work if somebody wants to prove that this particular obituary should have shown or should show to the defendant Dr. Buefisch the criminal character of the SS. Actually, it is more important that Dr. Buefisch did not have any knowledge at all about the above mentioned address. He was not present when it was made, nor did he learn about it in any other way; to crown it all, it has not even been established, as proved beyond any doubt, that this speech was made at all, as other participants in the social gatherings of the circle of friends also expressed their doubts as to this point, which has become evident in case V before Military Tribunal IV. All other evidence which has been submitted in order to prove Dr. Buefisch's knowledge of the criminal objectives of the SS, which has been submitted by the prosecution, has been refuted. Unanimously, all the Nurnberg Military Tribunals have ruled that the defendants, and at that each of them individually must be convicted of having had knowledge of the criminal objectives of their respective organizations, which ruling was applied in the case versus Pohl et al., and in the case against Flick et al. However, the Prosecution has failed to bring this proof. Furthermore, it cannot be said of the defendant Dr. Buefisch that he had special sources of information, and that as a consequence he knew more than others. Such an allegation must be ruled out altogether because in actual fact it amounts to this, that is, a person can be convicted for something which he ought to have known, without the necessity of bringing the actual proof that he did know it. By doing this, the limits set by the IMT for the sentencing of persons because of their membership in a criminal organization would be exceeded. Moreover, Dr. Buefisch had no special source of information and the prosecution has failed to bring in any evidence to substantiate that claim. On the contrary, because of the tremendous amount of work in

purely technical, engineering, and industrial fields Dr. Buetevisch was so overburdened with various tasks that he was even less fortunate than others in obtaining information considering extraneous events outside his particular spheres of work. If in spite of the above mentioned considerations Dr. Buetevisch's would be considered a member of the SS after all, another factor would have to be examined, namely whether he could have been expected at all to resign his SS membership. Dr. Buetevisch joined the SS shortly before the war; however, during the war resignations were not accepted as a rule. Anybody who handed in his resignation became subject to disciplinary or other court action. The SS considered resignations a disloyal attitude which was to be severely punished; if anybody resigned from the SS this action invariably resulted in the fact that the person concerned was declared politically unreliable.

All such persons were reported to the Reich Security Main Office in order to be put on their "Blue File", and it was only a question of time until such persons were sent to a concentration camp. Thus the defendant Dr. Buetevisch did not even have the chance to resign from the SS. The two officially recognized excuses for resigning from the SS, that is, unfitness for SS service because of a chronic serious disease or joining the Wehrmacht as a regular soldier, did not apply to him because, as an honorary leader, these reasons could not be referred to in the case of a resignation. A resignation on his part would therefore have been evaluated as a political demonstration, and the SS would have considered it as an act of disloyalty. Consequently, if Dr. Buetevisch had learned of the criminal objectives of the SS during the war and if he had intended to hand in his resignation because of that knowledge, he would have been in a precarious position in the true sense of the word, and because of this he could not be expected to expose himself to such an imminent danger only in order to resign his membership which was purely a matter of form.

If Dr. Buetevisch had been aware of the criminal character of the SS,

it cannot be doubted that he would have attempted every means to get rid of his honorary rank. Already at the time when, in the spring of 1944, Kranofuss approached him to deviate from the reservations which Dr. Buotefisch had insisted upon at the time of his joining and to don SS uniform at certain public meetings, Dr. Buotefisch was quite determined rather to face the dangers inherent in a resignation than to bind himself towards the SS in any way. And, when Kranofuss repeated his suggestion, Dr. Buotefisch unswervingly stuck by his decision and asked him to take steps that he be removed from the register of honorary leaders. Kranofuss knew well enough what risk this would involve and postponed the matter; after the attempt on Hitler's life on 20 July 1944 he pointed out to Dr. Buotefisch that it had now become impossible to realize such an intention. On the other hand, Kranofuss never mentioned again that Dr. Buotefisch should forego any of the reservations he had made.

All my statements which I have made up till now are in my opinion definite proof that the features characterizing a culpable membership in the SS, as defined in the IMT verdict, do not apply to the defendant Dr. Buotefisch. Moreover, Dr. Buotefisch cannot be considered a member of the SS according to the IMT verdict, for he did not promote the SS and its objectives in any way, nor did he have knowledge of the criminal nature of the SS. However, if an SS member is to be sentenced because of a culpable membership, this by no means presupposes that those specific facts have been proved per se; what it does presuppose is the fact that the member is personally responsible. However, this responsibility does not exist if special reasons made it incumbent upon the person concerned to retain his membership, provided this was sufficiently justified and could be excused on account of such specific reasons. The latter facts apply to Dr. Buotefisch. When Dr. Buotefisch was approached to accept an honorary rank, he was faced with an extremely critical alternative. If he had been called upon to become a regular member of the SS or joined the ranks of regular SS leaders, he would have definitely refused. As it



was however, he was faced with a rather unusual alternative, that is, his reservations were accepted and he was given an honorary rank which was only registered in the internal SS files. Therefore, Dr. Buettfisch had no reason to consider himself a member of the SS. Consequently, he had no reason to refuse. On the other hand, Dr. Buettfisch was also forced to consider what repercussions his refusal, not to accept the honorary appointment afforded him, would have had both for himself and for others.

The Chudon affidavit shows how difficult a person Kranfuss was, and how easy it was to offend him. Conversely, Kranfuss had supported Dr. Buettfisch in his various actions when he repulsed interferences on the part of party offices, or when he made it his task to help persecuted people. Dr. Buettfisch would have been unable to utilize Kranfuss, if he had rejected the latter's offer, especially as he knew how sensitive Kranfuss was, to accept the honor which was to be bestowed upon him. Would it have been morally better and more justifiable to refuse a more honorary rank, and by doing so, to rob himself of the chance to help others as before, or does it not even apply today that, by conscientious weighing the acceptance of a more registered honorary rank, he did choose the lesser evil? Only such action deserved to be punished which must be rejected if measured against the existing ethical laws. An action however, which can be justified and approved of morally can never be subject to punishment. No matter what view is taken in evaluating the charges made by the prosecution under count IV of the indictment, none of these views will converge into a condemnation according to which my client's actions should be punished by law, and which would make them appear damnable or abominable even from a purely ethical point of view.

In summing I can say the following: No matter how thoroughly the various counts of the indictment as far as my client is concerned are scrutinized, none of them will lead to the conclusion that they constitute

an action which should be punished by law. Because of the short-time at my disposal, I could not submit such a thorough scrutinizing in its entirety in my final plea, and I therefore refer to my closing brief. On the other hand, the Prosecution has failed to prove in how far Dr. Bucofisch has committed acts that are punishable by law. Whatever legal arguments are advanced, universal international law, Control Council Law No. 10, or other legal standards, the same identical decision will always be arrived at, that is:

That the defendant be acquitted!

THE PRESIDENT: Dr. von Metzler, may now present the Closing Argument on behalf of the defendant Haeffliger.

DR. VON METZLER, on behalf of the defendant Haeffliger.  
May it please the Tribunal:

In addressing Your Honors on behalf of the defendant Paul Haeffliger. I do not propose to deal with all particulars of his case covered in my Closing Brief, but will confine myself to certain significant features, arising both from his personality and from the position which he occupied in I.G. Farben, including a particular feature of his case under Count I of the Indictment.

It is for the first time that a foreign national appears in the dock of one of the Nuremberg Tribunals and it is a tragic irony, that this man who is indicted for crimes against peace and humanity, is a citizen of a country and even represented it for several years, after the Nazis came to power, as a Consul, which for generations was regarded the incarnation of neutrality and love of peace and freedom. It is the same man, who in 1934, in a speech held by him as Consul to the Swiss colony of Frankfurt, spoke the words which in a nutshell contain all those principles which decisively influenced his education and to which, according to his testimony, he never ceased to adhere, quote:

"I believe there is hardly a more peace-loving nation in the world than ours. There is hardly a nation, I am sure, more devoted to the system which aims at establishing law and rightful thinking in place of the sinister temptations of might and power than ours."  
End quote.

And now the man, who spoke these words, has to defend himself against charges ranging from crimes against peace to crimes against humanity. The tragic irony of his case is still more accentuated by the fact that after the collapse of Germany he was appointed official adviser of the Swiss Consulate at Frankfurt, and that after a comparatively short imprisonment by the American authorities he was definitely cleared



and released in December, 1945, and only in April, 1947, was brought to Nuremberg as a witness for the Prosecution, whereupon in May, 1947, he was again arrested and put on trial. This shows that the Prosecution apparently only in the last moment made up their mind to indict Paul Haeffliger.

And there is another feature in his case which even more underlines the tragic irony which I just outline to Your Honors. That is the fact that on the 2nd June, 1947, he was informed by the Hessian State Ministry, that the Law for emancipation from National Socialism and Militarism did not apply to him, which implies the confirmation that he is not to be regarded a follower of the Nazi ideology or the methods of their foreign policy. And it may be pointed out in this connection that Haeffliger himself never was a member of the Nazi Party nor of any of its affiliations. He furthermore at no time held an official or semi-official position in the German Government, or was a member of one of the sections of the Reich Association of German industry ("Reichsverband der deutschen Industrie").

It is the position of Haeffliger's Defense that, if one takes into consideration all these facts and then views the evidence produced by the Prosecution and by his Defense, one cannot but admit that the Prosecution has definitely failed to make out its case.

Under Count I of the Indictment Haeffliger's name appears only in connection with the light-metal sector, the alleged stock-piling of nickel and in connection with two insignificant incidents regarding political propaganda abroad, which were reported at sessions of the Commercial Committee at which Haeffliger was present.

Under Count II Haeffliger's name is mentioned apart from the cases of Austria and Czechoslovakia, which are no more under consideration by this Tribunal - only in connection with the establishing of Nordisk Lettmetall in Norway and with a file note concerning one single, insignificant discussion at the Reich Ministry of Economics concerning the trusteeship of Polish dyestuff plants.

Under Count III of the Indictment Haeffliger's name is not brought in connection expressly with any specific crime.

Count IV does not at all concern Haeffliger.

As for the rest, the Prosecution indict Haeffliger on the ground of their general theory of the joint responsibility of all defendants as Vorstand-members, which is serving as a dragnet to draw in all defendants and which I have dealt with already in my previous statement.

In reviewing the evidence produced by the Prosecution in the case of Haeffliger, one cannot but admit that this evidence is extremely poor and, as I respectfully submit, by far outweighed by the evidence offered by his Defense. Apparently the Prosecution were pinning their hopes chiefly on the cases of alleged spoliation in Austria and Czechoslovakia, in which they tried without success to allot to Haeffliger on influence which he never exercised. This however is not relevant anymore as these cases, as already mentioned were eliminated from this trial by the ruling of this Tribunal.

To begin with with the dragnet of the joint responsibility I may refer to my previous statement, in which I took the liberty to set out the reasons why in our opinion this dragnet-theory is inconsistent with the actual facts and legally unsound. On the basis of the individual responsibility of the Vorstand-members for their special working-fields, the position of the Defense of Haeffliger is, that his responsibility before the outbreak of the war was limited - apart from odd jobs in the light-metal field - in substance to the field of international cartel agreements for various heavy chemicals, on which he had specialized for long years even before I.G. Farben was established. This task absorbed the greater part of his working-capacity and kept him abroad for a considerable part of the year.

As for the rest, the evidence produced by the Defense has shown the peculiar position in which Haeffliger was as a Vorstand-member

and which can be summarized along the line that this position was not that of an ordinary Vorstand-member, and that therefore he had not the influence which the Prosecution tried to ascribe to him.

I would stress once more, that my client does not shun any responsibility for matters coming under his jurisdiction or his sphere of influence. But on the other hand, in the interest of his defense, he cannot be denied the right to adduce the actual facts surrounding his position in the Vorstand and putting his situation in the right light as it should be seen with the sober eye of a dispassionate observer. This realist manner of viewing the scope of personal responsibility is the only possible in a Court of Justice, as recognized for instance in the passage already quoted in my Opening Statement from the judgment of Tribunal II in Case 4 versus Pohl and Others (Transcript page 8079), to which reference is made once more.

If, therefore, my learned friend Mr. Sprecher, when he cross-examined the defendant Buergin on Haeliger's actual position in the Vorstand, ironically alluded to my client as "the orphan-child" of the Vorstand, I certainly do not take offense at this play upon words, because as a realist observer I cannot find that this joke got my learned friend any further. It did not change the actual facts, on which the defendant Buergin testified in his examination-in-chief and which he maintained also during his cross-examination, even when confronted with the "orphan-child aspect" by the Prosecution.

I would say, therefore, on the basis of the evidence introduced by the Defense on the actual position of Haeliger in the Vorstand - which by the way is confirmed by Prosecution Exhibit 2006, NI-444, - that all the observations made in my previous statement on the personal scope of business of an I.G. Vorstand-member, on his duty not to keep a constant check on the activities of his colleagues, but to intervene only in cases of apparent grievances, particularly hold true with regard to my client, who before the war on account of his special working-



field was frequently on extensive trips abroad, and after the outbreak of the war had no normal scope of business but was assigned from time to time to odd jobs, which again in different cases, as for instance Norway and Finland, caused him to go on trips abroad.

It is therefore the position of the Defense that on account of all those facts the defendant Haeffliger cannot be made responsible under the dragnet-theory of the Prosecution for any alleged activities of other defendants. The Prosecution has not offered any proof that the defendant Haeffliger in any particular case was given a reasonable ground for suspicion, which ought to have caused him to interfere with any activity of his colleagues, and that he deliberately and willfully has violated such obligation, quite apart from the necessity to establish the interdependency between omission and criminal effect dealt with in my previous statement.

As to the specific charges set forth against Haeffliger under Count I of the Indictment, the stock-piling of nickel and his other alleged activities in the light-metal sector have been shown by the Defense in their true significance, or better to say insignificance, in connection with the alleged participation in the preparation of an aggressive war. The same holds true with regard to the two incidents in connection with political propaganda abroad.

The Defense could have stopped at refuting the Prosecution's evidence, but in order to put Haeffliger's personality in the right light, the Defense has introduced in its turn a considerable amount of evidence bearing out its position, that Haeffliger never had any knowledge of Hitler's aggressive plans and did not participate in furthering them. This evidence has insofar in my humble opinion an especially strong probative value, as on the one hand it includes several affidavits of foreign affiliates showing the attitude displayed by Haeffliger on the occasion of international negotiations with foreign partners in his special working-field. On the other hand several documents show the fact, that I.G. up to the very beginning of the war and partly

even thereafter granted to foreign partners valuable technical experiences and know-how - in several instances of strategic importance - and loyally discharged their contractual obligations, helping their foreign business-partners, in setting up new plants and modernizing older ones.

It is the position of the Defense - and insofar I am speaking again on behalf of all defendants - that the evidence to which I just referred is of particular importance in connection with the knowledge of Hitler's aggressive plans by the defendants alleged by the Prosecution. For this evidence shows beyond reasonable doubt, that no such knowledge could have existed on the part of the defendants. Otherwise most certainly they would never have behaved in the manner as shown by said evidence towards their foreign business-partners, who





I.G. sent one of their chemists, specialized in this field of production, only two weeks before the outbreak of the war, to England, in order to set the new plant into operation. This chemist left England only in the last days of August, 1939, upon the advice of the British gentlemen and not upon his own initiative or upon instruction by Farben. This again is highly significant and shows the complete lack of knowledge of Hitler's aggressive plans on the part of the I.G. Farben gentlemen. Reference is made to Knoefliger Exhibit 30, Document No. 37.

Next comes the agreement closed between I.G. and Monsanto Chemical Company of St. Louis, Missouri, in 1937/1938 in a field of a production of particular strategic importance, namely that of Phosphorus. In his affidavit (Knoefliger Exhibit 53, Document No. 80) the former Vicepresident of Monsanto, DuBois, states that due to the cooperation by I.G., placing at the disposal of Monsanto not only their latest technical experiences in this field, but also the assistance of its experienced technicians, Monsanto was in the position to greatly improve, accelerate and cheapen their production-process, and it is particularly significant in this connection, that the exchange of technical experiences between I.G. and Monsanto continued even after the outbreak of the war via Switzerland.

I now pass on to the three pieces of evidence offered by some other defendants on this particular subject.

First comes a particularly important Tor Moor-Exhibit 68, Document No. 230, dealing with the erection of a new dye-stuff plant in Manchester, England, under a contract closed between I.G. Farben and Imperial Chemical Industries Ltd., London. Under this contract Farben placed at the disposal of I.C.I., beginning in 1937, all their latest experiences in this field along with three technicians, who were sent to Manchester by I.G. for the purpose of setting up the new plants and who stayed in Manchester until the 25th August 1939. This is again highly significant as to the knowledge of the I.G. Farben gentlemen regarding Hitler's aggressive plans, because no arrangements at all were made by Farben, to see to it, that the valuable secret technical data regarding the production of dye-stuffs were either

7 Jun 48-13-3-12-JH-Stewart (von Schon)

sefeguarded in England or brought back to Germany.

Next comes Ambros Exhibit 140, Document No. OA-604, showing, -which is of particular significance,- that the defendant Ambros negotiated with two gentlemen of the Canadian firm Shewinigan Chemical Ltd., who visited the plant of Ludwigshafen, on the 1st of August, 1939, regarding the licensing of the I.G. process for producing Ethylene from Acetylene and further conversion of the Ethylene to Glycol and Diglycol, both products of strategic importance.

Last not least I may refer to Schneider Exhibit 21, Document No. 115, showing that the British War Office in the end of 1936 made inquiries as to the erection of three plants for the production of concentrated Nitric Acid in England and that I.G. Farben was prepared to place at the disposal of the British partners their experiences and know-how, regarding also their process for the synthetic production of nitrogen, forming the basis of the Nitric Acid - production.

This last example is particularly significant because of the participation of the British War Office in the negotiations, a fact which did not prevent I.G. Farben to express its willingness to grant its assistance in the just described manner and which therefore once more shows the utter unsoundness of the Prosecution's theory regarding Farben's participation in the furthering of Hitler's aggressive plans.

The Defense of Paul Haefliger feel that, to add any further remarks on the subject under Count I of the Indictment, which has been so thoroughly dealt with by other Defense Counsel, would be superfluous, especially in view of the extremely poor and irrelevant evidence offered by the Prosecution against Haefliger in this respect.

I think I can be very short as well with regard to Count II of the Indictment.

As to Farbens transactions in P o l a n d, the Defense has shown that Haeffliger had nothing to do whatsoever with those dealings, and that his participation in the single discussion at the Reich Ministry of Economics was confined to arrange a meeting for the defendant von Schnitzler, at

which Haeffliger did not attend.

The facts concerning the alleged case of spoliation in Norway have been or will be thoroughly discussed by other counsel. As far as the defendant Haeffliger is concerned, no initiative was displayed by him, his participation in the Norwegian transaction being restricted to certain negotiations, preceding the setting up of the new company Nordisk Lettmetall. He did not hold any position in the Norsk Hydro and was not concerned with the negotiations with their French shareholders. The evidence produced by the Defense shows clearly the attitude of Haeffliger being directed to protecting as much as possible the interests of Norsk Hydro from the attempts of the Reich authorities, to take a substantial interest in Nordisk Lettmetall. It is in my opinion inconceivable that in view of this indisputable attitude Haeffliger can be implicated of having participated in any act of spoliation.

In order to show the true spirit of Haeffliger in dealing with enemy property during the war, the Defense has offered evidence on Haeffliger's activities with regard to the extremely valuable Petsamon Nikkeli concession, owned by the Canadian Mond Nickel Corporation. Again it is highly significant that Haeffliger successfully resisted the wishes of certain Reich authorities, to bring about an expropriation of said concession by the Finnish Government, for the reason that he would not have the old friendly relations between I.G. and the Mond Nickel Corporation hampered by any such act. I would say that this again is a convincing proof of that "rightful thinking" on his part, which Haeffliger ascribed to the Swiss Nation in the speech to which I referred at the outset of my arguments. And for this very reason the Defense cannot conceive of this man being involved in any other alleged act of spoliation, quite apart from the fact that the Prosecution failed to introduce any sufficient proof bearing out his participation in such activities.

As to Court III of the Indictment, it is sufficient to point out once more, that Haeffliger during his whole career of over 35 years standing, had nothing to do whatsoever with labor questions, not having been in the



management of any plant or works combine or in any of the I.G. committees dealing with such questions. But all the time he had no reasonable ground to suspect, that this field of industrial activity was not being looked after within the I.G. in a highly competent and model way.

Apart from that the Prosecution has not offered any evidence connecting Haeffliger with any of the crimes alleged under this Count of the Indictment. His own testimony shows that he had extremely vague ideas concerning questions of labor including the employment and treatment of foreign labor.

As to Count V of the Indictment, it is sufficient to refer to the observations made with regard to Count I. And I may once more stress what Haeffliger said during his examination in chief, namely that the fact that he, being a foreigner and a Swiss consul, nevertheless remained a member of the Vorstand, is a particularly strong evidence in support of the position of the Defense, that the conspiracy of the Farben Vorstand-members exists only in the imagination of the Prosecution.

Your Honors,

When thereafter in closed Court you assume the heavy responsibility of passing judgment in the biggest trial of this nature, which ever was pending before a Tribunal, you will undoubtedly view very carefully the evidence presented by both sides in the case of Paul Haeffliger.

I tried my best to present his case in the light of the simple and true facts which have been exaggerated and misinterpreted beyond all bounds by the Prosecution.

And it is my firm conviction, as I respectfully submit, that, taking all these facts in their true and simple significance and not indulging in any theories of responsibility, which are dramatizing these facts, there can be only one conclusion:

That the defendant Haeffliger under all Counts of the Indictment  
is not guilty.

THE PRESIDENT: The Tribunal will recess until one-thirty this afternoon.

(Tribunal in recess until 1330 hours)

AFTERNOON SESSION

(The Tribunal reconvened at 1330 hours, 7 June 1948)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: The Tribunal will now hear Dr. Nath on behalf of the defendant Ilgner.

DR. NATH (Counsel for Dr. Max Ilgner):

Mr. President, Your Honors:

During the 19th century the science of law in Europe was ruled by the idea of legal positivism. This ideology pertinent to our special science, to which we have devoted our inclination and our profession, has maintained its influence up to our days. It is not a mere chance that at a time, during which in the political field the idea of nationalism expanded to its most extreme form in the states ruled by authoritarian governments, legal positivism too ruled and blossomed. The followers of this legal theory still believe, even today, that the order of law can exist only because it is backed by the power of the State. They deny any metaphysical basis to Law and, as its only source, they recognize solely the positive statutes of the State. The followers of legal positivism believe to be able to refer to the experiences gained by international convocations, as this proved again and again that the Law is being used by those who have grasped the power into their hands for selfish aims. They refer to the fact that especially weak nations call upon the Law without success, because they are lacking the power to carry through their justified demands. Therefore, if politicians who represented the authoritarian form of a State conclude from these experiences that Power was the prerequisite of Law as such and that its value was superior to Law, and that thus the State was the only source of Law, then this pernicious philosophy was only the more consequent expression for the complete disavowal of

the metaphysical basis of Law, which has to find its last and deepest root in the idea of Divine Law or the Law of Nature or whatever name you want to give it. Only the shock which was the result of the terrible experiences of two world wars was able to revive the discussion in legal circles which leads us back to the source of our legal thought.

I am fully aware of the dangers which a renunciation of legal positivism could bring to the safety of an orderly State. Nobody will think of denying the necessity of a firmly established legal order and the existence of legal norms. Otherwise the position of the judge would be endangered in the modern life of a State. If one, however, proclaims the renunciation of legal positivism in a country which for centuries - in the field of International Law as well as during recent times under National Socialism - was forced to gain the experience that Might was superior to Right, one should not be surprised if the industrial trials in Nuremberg, which are conducted by the judges of a victorious nation, are being watched with special scepticism and critical observance by the German people. Thus I believe to be able to characterize it as an unique opportunity that here in this room men of our practical science, from two nations, have met, having but one desire, viz. to approach the noble aim of human Justice as closely as possible. I say that this is a unique opportunity to return to the German people the faith in Law and thereby to erect the strongest bastions of a democracy. *Justitia est fundamentum regnorum*, a wording with which the Holy Father Pope Pius XII in his encyclical "With Burning Anxiety" encountered National Socialism. A sentence, which today more than ever requests its value in International Law and which, Your



Honors, may be your guide for your finding of the sentence.

I believe that the case which is presented for your judgment here, and in which 23 leading industrialists of the greatest European chemical combine are put in the dock, offers a special occasion for your most careful examination. The interest of an entire world is being turned to the final result of this trial, and it will require all of your wisdom, your knowledge of mankind and your ability to understand time and circumstances of the defendants' life, in order to find a legal sentence which will correspond to the aim which I considered as so desirable, viz. the reestablishment of Justice.

In my opinion, Your Honors, this task has really not been made easy for you. For several months, the prosecution submitted a great number of documents to you, of which it asserted that these documents have some probative value for the decision in this case. It opened its submitting of evidence with a speech, with which it wanted to show you the evidence just as it looked at it and as it desired that the Tribunal should value the material of the trial. However, if one today examines the result of the submitting of evidence and if, in addition, one recalls the Opening Speech of General Taylor, the disproportion between the opinion of the Prosecution, which is being expressed in this speech and also in the indictment, and the actual facts is more than apparent. When the trial started, a surprised and shocked public was told that the "Nazi Party considered Farben to be one of its major propaganda organizations" (Sect. 58 of the Indictment). Furthermore, we read the assertion in the Indictment that "the Press Office of Farben in America started in 1933 to distribute antisemitic propaganda and publications everywhere in the United States" (cf. Prosecution Sect. 61). In Sect.

63 of the Indictment we find the sentence that "values amounting to millions, in the form of books and publications which glorified the 'master race' and the nazi state, were sent abroad by Farben for distribution". These are assertions which we only quote as examples and for which the Prosecution could not adduce any proof. We understand a certain measure of exaggeration on the side of the Prosecution; however, one should be somewhat more careful, even in our times, when asserting that leaflets to the value of millions allegedly have been sent abroad for propaganda purposes. It transcends indeed the limits of dispassionate conduct to a very large measure, if one has had to hear, in the Opening Statement of the Prosecution, expressions like the following: "These are men who stopped at nothing. They were the magicians who made the phantasies of 'Mein Kampf' come true." (German transcript p. 43). "These men wanted to own the world, and they were ready to shatter it if they could not succeed." (German transcript p. 141).

Once the Prosecution started, it did not refrain from asserting that the crimes of Farben, according to Count II of the Indictment, referred also to Greece and Yugoslavia, where Farben allegedly had robbed and looted. I ask myself whether one has heard, in the course of this trial, anything of Greece or Yugoslavia? I can refrain from discussing the flowers of oratory, which one can only call "window dressing". I refer to them in order to show from these few examples, which I could multiply at will, to what methods the Prosecution must have recourse in order to substitute missing evidence in important points by rhetoric. Thus we are not surprised that the Prosecution, in its Final Statement, and without taking into consideration the result of evidence, will probably repeat its guesses and combinations. For these reasons, I

consider it to be one of the tasks of the Defense, to discuss in a dispassionate way, with you, Your Honors, as far as it concerns my client, Dr. Ilgner, both legally and factually, the results achieved up to now by the proceedings.

Let us now turn to the person of my client. You, Your Honors, were able to watch Dr. Max Ilgner in the witness stand and you have gained a certain impression of his personality. Dr. Ilgner, who, while still young, occupied already a leading position within Farben is doubtless a personality of a special type. Intelligent, energetic and fearless, he conducted his defense in the witness stand, and stood up to the principles which he considered to be correct in business life. This man is anything but a reserved, careful character who adapts himself to the circumstances, who has neither the talent to be an opportunist, nor a crafty and cunning spy, as the Prosecution would like to see him. He carries his heart on his tongue, and we do not offend him if we mention that he favored the footlights of the public in order there to defend his ideas. His most important features are activity, energy and optimism. Thus, already prior to 1933, during a period of the most severe economic crisis, we see him as a member of the circle of economists around Bruening, the then-German Reich Chancellor, a circle which had accepted the task to support the economic policy of Bruening.

After National Socialism had taken over power and its rule had become a fact, he became a member of the circle of Economic Leaders, the so-called F Circle, which had been founded by Funk, who later became Minister of Economy, and which was to advise the Ministry of Propaganda in economic questions which concerned foreign countries. I have showed and proved by various documents that in this F Circle, which



existed but a short time, Dr. Ilgner submitted for discussion the excesses of National Socialism and was not afraid, even in the presence of Goebbels, to express strong criticism. As already in Bruening's time, here too, in the F Circle, the great anxiety for the German export trade caused him to employ his experience and knowledge in a suitable place in favor of the German export trade. Just as for every German man, regardless of the position he occupied, my client, too, was confronted by the problem to deny his collaboration to the new German National Socialist government or to put it at its disposal. We have to call it a historical lie if the Prosecution asserts that every clear-thinking person in Germany knew or should have known, already in 1933, that National Socialism would proceed on the path on which it later proceeded. If this assertion of the Prosecution were correct, we in Germany would not know why intelligent men abroad, its leaders and politicians would not have had the same foresight of the things to come. Their guilt would in no case be smaller, because they lived in a free world with free exchange of ideas and a possibility to gain information. Dr. Ilgner discussed these questions in 1933, and his deputy in Berlin NW 7, Dr. Krueger, proposed to him to sham death. My client's answer was that constructive criticism could not be exercised successfully from the outside and that it would be much more gallant to cooperate than to remain outside and to look, half curious and half afraid, at the things which were in the making. In this manner he solved the problem for his person, and nobody will have the authority to reproach him on account of this decision. To us it seems more sensible to have submitted criticism to the National Socialist rulers, and to have submitted to Hitler a report on a trip, like the East Asia report, pointing out to him, by red marking, the most important

points for the German export trade, than to resign and let things run as they pleased.

That this attitude corresponded to Dr. Ilgner's honest conviction, is shown by the fact that at the same time he put his aid and support at the disposal of the persecutees of the Nazi regime to a far-reaching extent. In this connection I have submitted a great number of documents to the Tribunal. Your Honors, the prosecution did show you, not wrongly indeed, the extent of a terrorist reign, which developed especially during the last years of National Socialism. Courage and the readiness to make sacrifices were required for assisting the racial and political persecutees, to protect their families and to give them a position enabling them to make their living, so that finally the office of Berlin NW 7 became a home for racial and political persecutees. The courage of a confessor was necessary to support the Christian churches in Germany, which were persecuted by National Socialism. The Swedish priest, Birger Forrell, insisted upon coming to Nuremberg during this trial, in order to aid my client by spiritual comfort out of gratitude for the latter's inner attitude. Thus the picture of a person is shown whom the prosecution believes to be able to excuse of war crimes and crimes against humanity. Your Honors, when discussing the counts of the indictment, I will show you the incorrectness as of this thesis of the prosecution, insofar as I did not disprove it already by my closing brief. Prior to my turning to these points, however, it is necessary to show you in a few words the importance of the Farben organization Berlin NW 7 and the position which my client held in organization.

First, it is a striking fact that the Berlin office of which Dr. Ilgner was in charge, did not have any name from which conclusions could be drawn as to the importance and tasks of this office. Without doubt, the name Berlin NW 7 is a solution adopted for want of a better one. This shows already to a certain degree the dual position which this office occupied within the entire combine. From many trustworthy documents and statements of witnesses in this trial, we have learned



that decentralization was an important symptom of the organization and working method of the combine. In spite of that, it proved necessary, in the course of the years, to create an office for certain fields of work in which questions which were of interest to the entire combine were dealt with. Thus, attaching them to the already existing most important and biggest department of the Central Financial Administration, of which Herr Geheimrat Schmitz was in charge, a number of departments was created, which were concentrated under the designation Berlin NW7, and which were subordinated to my client. This development resulted of needs from the situation of the Germany economy, to which I will refer later in detail, and which found its most significant expression in the crisis of World Economy which started in 1929, the collapse of various banks and the devaluation of currencies. It was the indisputable merit of my client, by developing a department of economy, of carrying out in time investigations of the situation of World Economy and its currency problems, as well as of its individual national economies, an institution for which the American National Industrial Conference Board served as a model and which gained a great scientific reputation under my client's leadership. It was only natural that in view of the tasks which this institute had to master and of the economic interests of the combine in South Eastern Europe, a branch office of the economy department was established later on in Vienna. In the second half of 1934, the Wipo was incorporated into the framework of the organization Berlin NW 7. The purpose of this department was to avoid contradictions when representing German business interests to the authorities, but in the first place this department has to handle requests in the field of trade policy, export problems, customs duties and quotas. Thus the possibility should be avoided that authorities played out individual offices of the combine one against the other. Further, we would like to mention the office of the Commercial Committee, which had to prepare the conferences of this Committee and

to evaluate results, and which handle the reports of Farben liaison officials, an institution to be mentioned later on. It stands to reason that such a combine had its own Press Office, later on called Information Office, which screened such publications at home and abroad as were of interest to Farben business, and which answered questions of newspapermen at home and abroad. In addition, however, there were a few more offices with specialized centralized functions — amongst them the "Vermittlungstelle W", which were not headed by my client and which were considerably bigger than the entire organization Berlin NW 7. The tasks of this organization show the position held by my client within the entire combine. The prosecution has tried to stress this position more than warranted by the facts and to assign to my client a position within the Vorstand which, in fact, he never held. The witness Dr. Krueger, my client's deputy, rightly emphasized that, outside of Farben, Dr. Ilgner was much more known than many of his colleagues, but that he did not belong, within Farben, to the circle of men, with whom the final decisions rested. His interest in political economy problems resulted in many trips. He was animated by the sensible thought that the economic interests of Farben would best be promoted abroad by a personal knowledge of the country and its people. This resulted in the absence of Dr. Ilgner from Berlin for, very often, many months. In the witness box, Dr. Ilgner confessed that he liked trips, and his co-workers confirmed in various affidavits that he communicated to them the knowledge of world economy connections during extended trips abroad. He was so active that he did not take care of his health, and was compelled to withdraw for 1 1/2 years, from the end of 1938 until the middle of 1940, from the direction of his Berlin NW 7 Office. It appears to me that these facts are of essential significance for my client, also in connection with the collective responsibility of the Vorstand, as alleged by the prosecution.

Thus I come now to the accusation of the prosecution which is

particularly directed against my client, and which has been formulated under

Count I

"Planning, preparation and waging of a war of aggression", viz. the assertion that Dr. Max Ilgner had been active in Nazi propaganda and espionage abroad, through the mentioned organization Berlin NW 7. Prior to answering the assertions of the prosecution, I believe it will be as well to discuss the legal prerequisites of the accusations. This will show quite clearly that the prosecution was not able to adduce evidence for the decisive legal and factual prerequisites, as required by article 2 of Control Council Law No. 10, as well as by the legal issues of the judgment of the International Military Tribunal. Indeed, the prosecution has not even tried to adduce such evidence.

Regardless of that, General Taylor, has, in my opinion, correctly recognized in the main the legal problem in his Opening Speech to this trial by stating:

"The only question which is subject to decision under Count I is the extent to which the defendants knew or participated in the preparation and starting of invasions and aggressive wars which were planned and which were actually carried out."

The International Military Tribunal had to examine the same problem and formulated this fact more precisely in its sentence as follows:

"Hitler alone was unable to conduct an aggressive war. He required the collaboration of statesmen, military leaders, diplomats and businessmen. If these persons knew his aims and still granted their co-operation to, by doing so, they participated in the plans created by him. (My underscoring)

Furthermore, the IMT judgment clearly expressed that no general vague knowledge or assumptions could be the basis for a penal judgment, but that it is necessary that the knowledge of a concrete plan for the waging of war be present and that, finally, the decision to wage war be not



separated by too long a period from the actual carrying out. Accordingly, the judgment of the International Military Tribunal considered such prerequisites as having been fulfilled only in the participation in certain conferences conducted by Hitler, during which he made public his plans, or in case of a positive knowledge of the subjects of these conferences. This correct legal opinion had the result that leading personalities of the Third Reich, such as Kaltenbrunner, Frank, Streicher, Schirach, Speer and Sauckel were acquitted of the charge of a crime against peace, quite aside from the 3 defendants of the IMT trial who were acquitted on all counts. I believe that I can be satisfied with these fundamental facts established by the International Military Tribunal, which give a clear picture of the prerequisites required for the proof of the guilt in connection with count I of the indictment. It is a known fact that Control Council Law No. 10 is only an implementation law of the Moscow Declaration of 30 October 1943 and the London Agreement of 8 August 1945, which, on their parts, were the basis for the charter of the International Military Tribunal and thus of its administration of justice. Therefore, article 2 of Control Council Law No. 10 can be interpreted only in the very same way as this was done by the International Military Tribunal. On account of our distribution of work, my colleagues dealt with this problem more closely, and I therefore may refer to their statements. Thus I can limit myself to draw the conclusion on behalf of my client, from this administration of justice of the International Military Tribunal.

In view of these expositions I am asking: Where did the prosecution produce evidence, that my client knew of concrete Hitler plans of a war or that he participated in a Hitler conference, that he learned of their discussions, was connected with the plans or otherwise made an effort to abet or aid such plans of aggression? The concrete knowledge of Hitler's plans of aggression was to be proved. The prosecution makes assumptions only. Nothing can be proved by

assumptions. But even those assumptions are devoid of any factual basis.

Dr. Ilgner supposedly had made Nazi propaganda abroad. Thus, first, he is reproached with contacts with the known American publicity agent Dr. Ivy Lee who advised Farben. There was a very good reason for his commission. In 1933, in the United States a boycott movement had started against German export commodities which affected considerably the products of Farben. It should be easy to understand that Farben did not remain passive in the face of this situation and did not tacitly look on how the credit of German export firms in the United States was being impaired and the sale of their products disturbed. If Farben did not oppose this boycott then it could have had immeasurable effects for Farben. In addition to that there was the fact that the boycott movement was carried on with political arguments and was more than a competition manoeuvre of interested firms which tried to use the situation for their own good. This was a case which concerned business and Farben did not need.

to leave anybody in doubt that it was a profit-taking enterprise. Thus Mr. Ivy LEE was commissioned. He had been recommended to my client by Charly MITCHELL, president of the National City Bank, and Walter TAEGLE, president of the Standard Oil Company of New Jersey, and had worked with great success for the publicity of the Standard Oil Company. Mr. LEE gave advice which had nothing to do with Nazi propaganda. He suggested that prominent German businessmen and politicians of international reputation should write explanatory articles in Germany; these articles were sent to a number of American businessmen and men active in public life suggested by Mr. Ivy LEE. It was Mr. LEE's condition that no usual propaganda should be made but - as he put it - fair publicity only, of which alone he expected success in the United States. In proceedings before the Committee for Un-American Activities Mr. LEE's activities for Farben were thoroughly investigated. Neither he nor his firm was punished nor otherwise prejudiced; which proves that his cooperation with Farben could not be objected to by the Americans.

The prosecution believes to perceive another point of alleged Nazi propaganda in the fact that my client caused shipments of books to America. The evidence showed what was the matter with these book shipments. These were gifts to cultural institutions, hospitals, schools, Chambers of Commerce, which Dr. ILGNER had visited during his trips, and sporadic shipments to the NSDAP Organization for Germans living abroad which had asked for books from home. By making a one-sided selection, the prosecution tried to create the impression that those were mostly national-socialist publications. In my document book No. 7 I have submitted to the Court the remaining lists of books and they show that preponderantly books belonging to classic literature and belletristics were sent to America; they have nothing to do with National Socialism and its ideology. All these books were in German and were accessible to people only who know the German language. Here the question alone is at issue whether my client by this good-will action was pursuing aims which served the preparation and



planning of an aggressive war. As to that no evidence was produced by the prosecution. Besides, there is in every country a considerable number of publications of foreign political ideologies; the fact that they are there does not deserve the reproach of propaganda let alone an accusation of preparing an aggressive war. In connection with that it was reserved for the prosecution to qualify the blessed activities of the Schurz Association, the president of which was Dr. Max ILGNER, as an instrument of Nazi propaganda abroad. It is particularly difficult in this case to follow the deductions of the prosecution. The arrangements of the Carl Schurz Association, which was established in memory of the great German-American Carl Schurz, long before national socialism, were visited by so many Americans in Germany that as a matter of fact there should not be any need to discuss further the purpose and aims of this association. For many years it sought for an understanding in Germany between the American and the German nation. Your students and professors, Your Honors, who came by way of exchange to Germany remember gratefully even today the reception they found at the Carl Schurz Association; this has been proved by a movie produced on such an occasion and now repeatedly shown at an American university. When the meritorious ex-president HOOVER visited Germany a festive reception was given to him at the Carl Schurz Association. Your ambassador, His Excellency DODD, and other members of the American Embassy in Berlin were several times guests of this association. It would be a bad reference for all these Americans who had the opportunity to observe the endeavors and aims of the Carl Schurz Association if they would not have noticed that the association, according to the allegation of the prosecution, had been a camouflage instrument of Nazi propaganda. Our opinion in this respect can not be shaken by the reference of the prosecution to the loose connection existing between the Carl Schurz Association and the Culture Department of the German Foreign Office, and the fact that the association got from this source modest financial support beginning in 1936, on the

occasion of the Olympic Year. I believe that such an association which wanted to do pioneer work for a healthy foreign policy would have drawn the attention of any foreign ministry regardless of where such an organization would have worked. It has to be appreciated as a special merit of the Carl Schurz Association's management and of my client as its president that they understood how to keep up the old tradition of the association and how to prevent possible attempts of the national socialist state to gain influence on the association. In my opinion it is sufficient to refer to the many convincing and detailed documents of the defense to refute the allegation of the prosecution that the aim and purpose of this association's activities was Nazi propaganda.

I shall now consider the further allegation that my client in his capacity as chief of the I.G. Farben Office Berlin NW 7 indulged in espionage activities in Germany and abroad for the preparation and planning of an aggressive war. This allegation does not fare better than the charge of Nazi propaganda mentioned just now. According to the opinion of the prosecution espionage was about all my client did and that was done at the organization Berlin NW 7. When Dr. ILGNER went abroad and contacted leading men of economic, political and cultural life during these trips then he did it, according to the opinion of the prosecution, for the dark reason of espionage only. Your Honors, we believe that German espionage abroad never passed a particular test of competence. Much less so under national socialism. Otherwise it would not be comprehensible that such basic mistakes about the circumstances abroad could exist in leading political circles in Germany. One of the worst, not to say one of the most incapable, espionage agents would have been my client Dr. ILGNER, if one wants to look at him from this point of view. Witnesses who know my client thoroughly testified that having the choice between Dr. ILGNER and any man from the street they would chose without hesitation the man from the street. As I told already when describing the personality of Dr. ILGNER, he takes always the straight path. His

vivacity and the fact that he is communicative make it impossible for him to be a carrier of secrets. What he learned during his extensive journeys and the knowledge he acquired was put down in travel reports and included into the library of the Economy Department which was accessible to anybody, who was interested. The very interesting East Asia report, a publication in three volumes, was sent to many persons.

The prosecution believes even more to recognize espionage agents in the I.G. Verbindungsmaenner. The number of mistakes, made by the prosecution especially as regards the aim and tasks of the I.G. Verbindungsmaenner, is particularly great. This was an institution which, as we have proved, served exclusively business interests and was established after the pattern of great Anglo-Saxon corporations, like e.g. the Standard Oil Company of New Jersey, the National City Bank of New York and the Imperial Chemical Industries (I.C.I.), London. Emerged from the Vertrauensmaenner of the Central Finance Administration, the so called "Zefi Vertrauensmaenner", whose business it was to observe in a disturbed world currencies and their problems, the I.G. Vertrauensmaenner did not come into existence until 1937. These were men from the Farben sales department abroad who were in the first place salesmen for their Farben products. In many cases Farben Verbindungsmaenner were foreigners and only very few of them were men who could be called followers of national socialism. We have submitted to the Court documents which show the tasks and the activities of the Farben Verbindungsmaenner; we were also able to submit affidavits of several former Farben Verbindungsmaenner some of whom still live abroad. Each of them has rejected with indignity the accusation of espionage. The value of their reports which were supposed to be made monthly was rather varied. One limited himself to collect newspaper clippings and to make from them a report, another reported, if it seemed to him that it was important for business, occasionally also about the political situation of the country where he was a guest. The prosecution under-estimates the business risk which results from Farben export and investment of large



capital e.g. in such countries which deserve special attention because of their latent dangers of revolutions. It is therefore not only natural, but a downright necessity for the management of a concern with such foreign interests like those of Farben that the Verbindungsmann in question reports in time about such things, too. The prosecution unjustly refers to a report of the USA Embassy in Buenos Aires dated 21 February 1944 (Exhibit 914) in which German firms, among them also Farben, are suspected of espionage activities. This report can never be a basis of a decision of this Court since this is an unilateral allegation of a party; this allegation was not examined in any ordinary proceedings in which the defendant was also heard. On the other hand we are in a position to refer to affidavits and documents which come just from the two Verbindungsmannen in Argentine. They prove that both gentlemen had to submit themselves now after the end of the war to detailed investigation proceedings before Argentine authorities. The proceedings ended with a clear proof that they were not guilty and showed that the preferred espionage charges were untenable. Dr. ILGNER never gave directives which would allow a conclusion that the I.G. Verbindungsmann carried on espionage activities.

Finally there was no connection with the High Command of the Wehrmacht, Counter Intelligence Division, which would permit an assumption of cooperation in the field of espionage or would justify a criminal guilt of my client as regards the charge of preparing and planning aggressive wars. My client had no official connections either with the Chief of the Counter Intelligence at the OKW, Admiral Canaries, or with the subordinate agencies of the economic intelligence, Herren Block and Focke. Because of the passive attitude of members of the I.G. Vorstand, especially as to this problem, the entire Vorstand had to endure serious reproaches already in 1943 during a lecture of the chief of the division OKW Counter Intelligence, economic intelligence. At the beginning of the war the OKW had to resort to compulsory conscriptions of individual employees of the

economic division to get specialists of Farben in economic problems.

We believe that the other states at war did not hesitate to use at the outbreak of the war information facilities, also if they were at the disposal of private economy. As an example, Your Honors, I have submitted to you under exhibit No. 67 an excerpt from the book by Mr. Frank A. Howard under the title "Buna Rubber", from which it results that Mr. Howard in 1938 - therefore even in peacetime - forwarded a strictly confidential report via the American Embassy in Berlin to the State Department in Washington for information of the Department of War and Navy; this report contains exact data about the production and import of fuel, lubricants, synthetic fats, rubber and fibrine in Germany. The production of the I.G. Farbenindustrie in the synthetic field is explicitly and confidentially referred to.

In connection with the proffered espionage charge I would like to enter into the case of Freiherr von Lersner who is supposed to have been an espionage agent of Farben in Turkey. In this case the prosecution made a special mistake. Freiherr von Lersner had been the head of the German peace delegation in Versailles. He went with the help of his friends from Farben as a racial persecutee to Turkey and there intensively endeavored to prevent an expansion of the war and to work for a restoration of world peace. In his affidavit Freiherr von Lersner positively emphasizes that espionage activity wrongly imputed to him was the diametrically opposite of his attempts for peace. The late President of the United States, Roosevelt, spoke in highest appreciation of the personal integrity of Freiherr von Lersner to the American Ambassador in Vienna and Sofia, George H. Earle even in 1944 as is shown by the affidavit.

Within the limits of this count the prosecution finally accused Dr. Ilgner that he with Dr. Schnitzler and Mann



"jointly with government officials prepared export programs for the entire German industry and devised methods for the expansion of German sources of foreign currency." (cf. Count No. 49).

My client's memorandum about the promoting of German export is referred to. This charge shows a basic misunderstanding of German economic needs and makes necessary, in the common interest of Farben defense, to submit to the Court basic explanations. I am of the opinion that it is necessary for your verdict, Your Honors, if you want to understand the business policy of Farben in reference to the allegations of the prosecution, to get a comprehensive view of the situation and development of the German political economy during the latest decades. For this purpose I have had made an expert opinion by the Southern German Institute for Economic Research which deals with the following topic:

Which were the causes of origin of Foreign Currency Control the promotion of export, "Creation of Employment" measures and of aspirations for autarchy in Germany during the years before and after 1933?

This expert opinion was made by Dr. Eduard Verle<sup>1</sup> under the direction of the internationally recognized specialist Professor Wagemann, former president of the Reich Statistical Office and the German Institute for Economic Research. I have enclosed this expert opinion with my closing brief and I beg the Court to direct its special attention to this opinion. The time limits of our oral pleading as requested by the Court do not allow me to present this economic opinion in extense. By presenting to you the basic ideas of this work I refute the incorrect allegations of the prosecution according to which promoting export served to prepare an aggressive war, and Farben, particularly my client Dr. Ilgner, could have had any decisive influence on the economic and currency policy carried out by the national socialist state.

You all will remember those pleasant times when one

could travel with one's country's money, mostly hard gold cash, without being hindered by any regulations of a financial - or currency - technical kind. This was based on the fact that world economy was governed by the so called "gold mechanism" before the first world war. This mechanism was based on a voluntary division of labor within an indivisible world of countries which contributed their greatest share of economic production according to the law of comparative costs for the advantage of everybody concerned. The principle of gold mechanism consisted shortly in the following:

If the demand of a country for foreign currency increased, e.g. by a rise of import above the foreign currency intake through export, then the internal rate of exchange dropped or - if the central bank intervened - gold flew off with a deflationary result. In both cases import became more expensive; this resulted in a recess of the internal demand for foreign commodities, i.e. import was reduced. At the same time the slump of the exchange rate or the deflationist gold losses resulted in a fall of the price of the own commodities and thus in an increase of competitiveness in comparison with foreign countries, and this automatically in an increase of export.

But this world economy could work under certain condition only. Those were in particular: An unimpaired morale as regards international law, the unconditional will of every state to live peacefully together with all the other states and to act according to the rules of the gold mechanism, the participation of all countries in this system and finally the unshakable mutual truce that all those participating will adhere to the existing rules under any circumstances. This mechanism is severely disturbed if individual nations do not recognize fully the rules existing till then, or if

political interventions impair the purely economic process of the world political credit - and trade relations. It is disrupted if the extra-economic influences rise above the equalizing power of the mechanism and if thereupon the participants do not adhere to the rules any more because of a supposed instinct of self-preservation. This very thing happened after World War I and broke up the world's economic unity which is so advantageous to all.

The reasons for the failure of this automatic mechanism of adjustment after World War I were, in the main, the following:

1. Through the war, production and markets were changed in nearly all countries of the world.

2. Through the war and the treaties concluded after the war, creditor countries were turned into debtors, and debtor countries into creditors.

3. By commercializing the reparation debts imposed upon Germany by the Versailles treaty, the fact was veiled that these political debts, being unnatural, could not be borne by the national economy.

4. The political indebtedness of the vanquished countries of World War I resulted in a far-reaching structural crisis in the sphere of economy and social politics, throughout the world which

5. had such a devastating effect on the world's economy that, in conjunction with a crisis of the international currency situation and the departure of several countries from the gold standard, the well-known world-wide depression of the thirties came about.

Although the United States of America, since World War I, had become the biggest creditor nation, they were the first country to start an autonomous economic policy, especially



by not letting the influx of gold and foreign currency from Europe, in the post-war years, bring about an extension of credit, as would have been required automatically by the gold standard. On the contrary, the United States sterilized the afflux of gold, thus crippling one of the most vital functions of the gold currency system. The motivating reason was that a following of the mechanistic rules, which would have caused of needs and increase of imports and a decrease of exports, would have entailed highly disadvantageous consequences for American industry. Thus, on the contrary, the United States endeavored to protect at the same time by a tariff wall agriculture, production of raw materials and manufacturing industry, and to keep up a favorable trade balance, contrary to the rules. When, in the summer of 1931, the world's credit crisis started, the USA and other creditor countries tried to save what could be saved, and in a panic, called off from the debtor countries the credits extended to them, for the most part of short term. Great-Britain alone recalled 3 billions of gold currency from Germany within barely two months. By this the debtor countries, especially Germany, were thrown into a transfer crisis from which there was no way out, and this finally caused the total collapse of the world-wide credit system. In September 1931, Great-Britain was the first country to dissociate its currency from gold. In April 1933 the United States followed, and in 1934 the dollar was devaluated to 59% of its former exchange value. In September 1936, the gold block countries of the European continent followed suit, as they were also forced to devaluate. Thus in the whole world the credit policy regarding domestic economy was separated from the currency policy affecting external trade whenever it seemed to serve the national interests. One desired to avoid the consequences of

deflation, viz. curtailment of production, a slump in prices, unemployment, and their social effects on the own country, as far as possible.

In contrast to this, the German economic policy, as pursued by Bruening, stuck to the stabilizing of the Reichsmark, causing thereby a deflation and the subsequent unemployment of 6 million people, which policy however, strictly followed the rules applied so far in international economy.

Germany played a purely passive role in the political and economic re-orientation of international relations from 1918 till after 1932. She thus had to accept a lowering of her economic strength through territorial losses (at home and her colonies), through reparation obligations (payments in money and in kind) and through the unilaterally imposed most favored nation clause (up to 125). By this she was turned from a creditor country, with investments abroad between 23 and 25 billion Reichsmark, into a debtor country. Even if the political reparations debt was alleviated by stages (Young and Dawes plan, Lausanne agreement) turned in part into a commercial debt and finally abolished altogether, there can be no question that her balance of trade or her interior economic structure has been definitely changed thereby. The total German indebtedness to foreign countries amounted to 26.8 billion R.M. in the middle of 1930; of these, not less than 16 billion RM were short-term debts. Germany's foreign trade structure was also very easily affected by disturbances in world trade because it was built entirely on the possibility of freely using the proceeds from foreign exchange. As a country poor in raw materials and with too small a food basis to feed her own people, Germany had to depend, already before World War I, on the importation of raw materials and food. After the world war this dependency on imports became still greater.

The foreign currency for her excess overseas imports were provided by exports profits in the trade with Europe. German Foreign trade thus was the base of life and not an additional source of wealth, contrary to countries with a greater home supply (U.S. Russia), or supplies provided by their own currency area (colonial powers, currency blocks). The saying "export or die" applies to the German problem, which has become a crucial one.

After the outbreak of the universal economic crisis in the fall of 1929, Germany terminated her period of rationalizing, which had been financed by foreign credits, and changed over to a policy of deflation, in accordance with the rules of the clearing mechanism of world economy; at first, with a success in foreign trade, as shown by the improvement of foreign trade in the years from 1929 till 1931 (from more than 36 million RM to more than 2,872 million RM.) She had to pay, however, with an extraordinarily severe deflationary crisis in her interior economy, the following of these mechanistic rules. The production index dropped from 100.9 to 58.7 between 1929 and 1932, and unemployment increased at the same time from 1.9 million to 5.6 million people. Thus the crisis, getting more and more acute, dragged on till the fall of 1932. All sacrifices, however, such as mass unemployment, cuts in wages and salaries, increased taxation and other measures, proved in vain. The attempt to reach an adjustment of the trade balance by the method of a deflationary policy was bound to founder because there was, at that time, neither a willingness of the creditor countries to a policy of credit extension, corresponding to the clearing system, nor a readiness to purchase an increased amount of German goods. On the contrary, by the deflation of currencies, a policy of protective tariffs, the extension of preferential systems (Ottawa), the licensing of imports (Australia,) and the collapse of purchasing power of the countries



which had been her customers, additional obstacles were placed in front of the German export. The turn-over of the German export accordingly dropped from 13,483 billions (1929) to 4,871 billions.

Although the German policy of deflation thus proved ineffective for the adjustment of the balance of payments, it did have a high effect on the German interior political development, which soon took a dangerous direction toward a destruction of the social structure. Through the orthodox application of the deflationary policy, additional millions of workers, farmers and tradesmen, deprived of their basis for existence, as well as the intelligentsia impoverished joined hands with the stratum of professional soldiers of World War I, thrown out of their professional career, and with the middle classes which had lost their property through the inflation. Animated by the idea that they had no prospects for the future, they were a latent and easily radicalised revolutionary army.

The lack of success of the deflationary policy according to the old rules of the gold standard in a world which had already dropped those rules has thus very much contributed towards the political impotence of the up to now ruling classes in politics, administration, science, banking and industry and, supported by the masses of millions of dissatisfied and desperate people, it has brought National Socialism to power.

Makeshift counter-measures on the German side were taken at the expense of the gold and foreign currency fund at the German currency issuing bank, whose reserves dropped from 3 billions 174 millions RM in June 1930, to 374 millions RM in June 1933. Moreover, the other foreign assets, bonds, shares, participations, real estate, also decreased by 2.6 billions. On the other hand, Germany still transferred a total of 2.8 billions RM for interests paid during the period from 1931 till 1933.

In order to stop the flight of capital and the irregular recalls of credits, Germany was forced to draw up so-called "standstill" agreements with the creditors. It must be noted that the foreign bank syndicate granted supporting credits only under the condition that the flight of capital be effectively prevented. This demand was also one of the reasons for the introduction of the obligation for previous official approval of payments abroad and for handing over all foreign currency the first stage in Germany of government control of the holdings in foreign exchange.

In the course of 1933 and 1934, by reason of the policy of creating work, adopted in the meantime for social and political reasons, the imports requirements still increased, whilst exports decreased more and more on account of the currency devaluations of the competing countries and the lessened purchasing power of the buyer countries weakened by the depression (from 13483 million RM in 1929 to 44167 million RM in 1934).

In the summer of 1934 in spite of a stricter control of imports (the first control offices had been established in the meantime) the liability side of the trade balance increased alarmingly. For this

reason the Reichsbank, on 25 June 1934, adopted the daily allotment of the requested foreign currency, according to the incoming foreign currency. This emergency measure, however, proved to be futile too.

The futility of all makeshift counter-measures led at last to the perfecting and working out of a system from the foreign exchange control measures established until then, embodied in the "New Plan" of Schacht, the Reich Minister for Economy (September 1934). He now introduced for Germany, too, the principle of reciprocity, instead of the principle of prices still valid up to then; he strove after a clearing of the balance of payment directly from country to country. The control was placed into the sphere of imports and exports. The guiding principles of this "New Plan" were:

1. To buy only what can be paid for,
2. To buy only from your customers,
3. To buy only what is most needed.

The subsequent allotment, as handled up to now, thus was replaced by a prior licensing, in the same manner as usual nowadays in the imports procedure of the JEIA.

With the "New Plan", success-vainly sought for a long time, finally arrived. German imports decreased from the 1st quarter of 1935 on, whilst the exports increased from the 2nd quarter of 1935, so that the year 1935 closed again with an urgently needed exports surplus of 111 million RM. The overseas-exports had also increased since the summer of 1934, those to Europe, however, on account of the re-grouping, did not reach their lowest level until 1935.

The German exporting industry could not pursue a policy of their own in view of the currency and foreign trade policy established by the state, but had to comply with the framework of general policy. This would not have been possible under a democratic regime either, much less under a totalitarian regime governing by special means of power and by reprisals for private industry can never by itself change the basis of state policy concerning currency and economy, as shown by the example of all countries



in this period.

The increase of German exports, however, was for a long time only a by-product of the other measures, which had already come into effect.

In the beginning, it was thought sufficient to utilize the endeavors of foreign creditors to liquidate their blocked assets in Germany for the purpose of increasing exports. This procedure showed the tendency to develop into a means of paying off debts instead of bringing in foreign currency by increased exports, which was unbearable in view of the urgent need for imports.

For this reason a fundamental transformation of the export bonus system was inaugurated on 1 July 1935. Within the frame of a "self-help drive of industry and trade", each economy group, by an export contribution had to establish a fund for promotion of exports, from which fund the exporting business was paid the export bonus. The lowering of the entire price level by deflation was replaced by the lowering of the partial price level of export prices by individual export bonuses (partial devaluation). By this method, in contrast to the devaluation of currency, the export price was powered without causing at the same time a rise in prices for imports.

Since the method of a radical devaluation of the Reichsmark in regard to the British Pound and the Dollar could not be carried because of rational estimates of the leading circles, as well as on account of ineradicable prejudices of the population against an inflation, there was no other alternative except this indirect, partial devaluation, distinguishing between countries; for at this time a uniform level no longer existed within world economy.

The disadvantage of this method was that each change in the subventions for the promotion of exports was bound to cause an insecurity in business circles and complicated calculations. Furthermore, it required a large staff in order to observe market conditions abroad. May I refer, in this connection, to the duties of the Zeff men of confidence, later an I.G. liaison men. No dumping, however, was connected with this method, as it

would have been in opposition to the urgent interest which Germany had in the highest possible exports results.

It took a long time until Germany followed the example of the other powers in world trade, and, on her part, changed over from a deflation policy to an autonomous economic policy. The USA started their New Deal almost simultaneously with Germany. As already described, the deflation policy, as carried out in an orthodox way during the years up to 1932, was unsuccessful for the German export and import economy, and the other powers were not prepared any more to apply the rules of the gold clearing system to the detriment of their domestic economics. One may not overlook the dangerous consequences of mass unemployment, decreasing profits and of a steadily worsening standard of life in interior politics.

And so it happened that from this side, too, came the will to switch over German economic policy to the policy of procuring employment. It is indeed a universal principle that desperate and impoverished masses always follow the slogans of politicians who promise them bread and work, particularly when the economic methods applied so far have not met with any success.

Economic activity was promoted by public employment procurement measures (e.g. the construction of Reich motor highways) by the decrease of taxes which had been increased to an intolerable level during the crisis, and by tax alleviations. Favorable results could soon be observed. The industrial production index increased once more and unemployment decreased accordingly, viz. from 5 575 492 people (1932) to 2 151 039 people (1935)

The import requirements increased considerably, after the raw material reserves had been used up in 1934, and on account of the including of millions of unemployed persons in the economic circle, while on the other hand exports became more and more difficult. Germany was unable to find the way out of the distress connected with the most urgent import requirements. Therefore, it had to be attempted to decrease the import requirements by other means. The efforts to decrease the share of the import requirements in the supply of the domestic economy with raw materials

and foodstuffs by increasing the production at home served this aim, they were summarized under the slogans "Autarchy", "Agricultural production struggle" and "Four Year Plan". The main problem was to increase agricultural production in those fields in which the import requirements were especially high, e.g. in the supply of fats (fat bottleneck). In the industrial fields the production of synthetic rubber (Buna), synthetic fuels and oils (by hydrating coal), of plastics and artificial wool, besides that, the smelting of ore found in Germany, which had but a small contents of iron etc., were attempted and achieved.

Naturally it would have been more economical to purchase these basic products as natural products from the old sellers in the customary quality and at more favorable conditions. This, however, was opposed by the far too small stock of foreign currency which had to be reserved for the absolutely necessary, irreplaceable import of foodstuffs and raw materials.

This was the problem facing my client Dr. Max Ilgner, in view of the fact that Farben was the largest German exporting firm, a problem which is to-day recognized by the occupation powers of Germany and which occasions great worry to them.

Your Honors, I hope that I have made clear to you the forced turn of economic development in Germany. The assumption of the prosecution that private industry was interested in these measures, is thus refuted. The furthering of export has been ordered by the government. Private industry indeed objected in the beginning very strongly to plans which represented an extremely heavy burden for the German industry, as is shown by the creation of the export fund, towards which Farben alone had to contribute 55 million Reichsmark yearly.

The affidavit given by the official of the Reich Ministry of Economics handling these matters has proven that these plans had nothing to do with aggression, as the great majority of German imports did not consist of goods for armament or raw material essential for war production, but in food and raw materials for the requirements of the civilian population. The German exports promotion, therefore, did not help in any way to prepare an aggressi



war.

Your Honors, as I was able to prove in my presentation of evidence, my client was working only for the peaceful development of Germany's relation world to economy. He based his ideas upon the assumption that not only an exact personal knowledge of the economic conditions of other countries was necessary for Farben exports and thus for Germany too, but he also believed that it was possible to obtain a better understanding for the economic difficulties which we have to face through a close contact with economy circles abroad. For this purpose he used the opportunity offered by the "Kieler Wochen", to organize conferences, which facilitated discussions between leading business men of foreign countries and of the German industrial circles. The realization of this basic thought was also the purpose of the "trip through the homeland" (Heimatsfahrt), of the Automobile Club of Germany, which took place already before 1933, following a suggestion by my client, and later the so-called "Industrierevierfahrt". Both events, in which industrial circles from abroad participated as guests, took place under the presidency of the Duke Adolf Friedrich of Mecklenburg, whom you have heard here as a witness.

Dr. Ilgner used every possible opportunity to work for a closer contact with business friends from abroad and thus to promote the understanding between the nations, which is demonstrated also by the smaller events organized by him, the so-called hunting party in the Klachau. The prosecution considers the events organized on the occasion of the Kieler Wochen only as a cover for espionage activities.

Your Honors, I can only answer this by pointing to the many letters of acknowledgement and enthusiastic acclaim of the foreign visitors, which I have submitted. I believe I do not have to say any more about this subject. The economic policy of my client, which he followed, before and during the war, with regard to the countries which were mainly agrarian was based on the same leading thought. His basic principle was the sound idea that the export contact with these countries must necessarily be

promoted, if an industrialization of these undeveloped countries succeeded in raising the standard of life of their peoples, and thus enabled them to buy German export goods. He was, in this connection, of the opinion that, in the case of new business organizations, the partner belonging to the nation where it was founded, had to represent the majority of the capital, in order to safeguard his interests and the interests of his government in the planned project, while Farben as a partner, was the technical director.

Dr. Ilgner also steadily maintained this viewpoint during the war, with regard to the countries in the South-East of Europe; he safeguarded their interests with the National Socialist government, by advocating that Germany pay its debts to the Balkan countries, before it could expect further deliveries from them. The National Socialist economy administration reproached him for this attitude. These facts are, in my opinion, to be taken into consideration when judging the statements of the prosecution regarding spoliation and looting (Count 2 of the indictment), a charge which is contradicted by the attitude of my client in matters of economy and proven through many public conferences.

Before concluding the discussion of Count 1 of the indictment, I have to emphasize that my client was a peace-loving man, which is proven by a great number of documents and by testimony of witnesses. The outbreak of the war represented to him the destruction of his plans for which he had worked for many years, and of the work of his lifetime, which had economic cooperation as its main purpose. Reliable witnesses describe him as a man of such optimism that shortly before the outbreak of the war he did not believe that this would happen, he did not even believe that war had broken out, as stated by the witness Dr. Krueger. This man, who has proven his faith in peace and his desire for the maintenance of peace through his work, can never be guilty in the sense of Count 1 of the indictment.

To Count 2 of the indictment:

The Prosecution has, furthermore, charged my client with participation in industrial transactions in territories occupied by Germany, which it

called "spoliation and plunder". As I have already stated in my adduction of evidence, I shall undertake to discuss the Norway case as a whole. Your Honors will find a detailed statement in my closing brief. Here I just want to point out to Your Honors the main points, taking into consideration the part which my client had in the carrying out of this business. I refer to the statements regarding legal principles by my colleague Dr. Siemers, dealing with the problem "spoliation and plunder", in accordance with the necessary division of work among the defense counsels. Apart from this, your Honors will recognize that in the case of Norway there exists no special legal problem, after the facts in the case have been clarified.



The result of the adduction of evidence does, in my opinion, leave no doubt that this was a matter which had been carried out by Farben in a correct manner, in correspondence with the usual practice in private industry. We have to consider two occurrences separately:

The first is the founding and the organization of the firm Nordisk Lettmetall NS in Oslo, under participation of the Norsk Hydro, I.G. Farben and a company controlled by the German Reich. The Prosecution has stated that it was the aim of the Nazi government and of Farben to exploit the Norwegian industry for the German war production and the colonization of the Norwegian economy. In order to represent this thesis as more plausible, Farben is identified with the Nazi government and its aims and methods, to simplify matter.

The facts show us a different picture. It was not Farben who was responsible for the founding of the firm Nordisk Lettmetall, but the former Director General of Norsk Hydro, Dr. Aubert, came to Berlin in order to request the assistance of Farben because the Plenipotentiary of the Reich Air Ministry for the Light Metal Industry, Dr. Koppenberg, had instructed his company to construct a light metal installation. Friendly relations existed since many years between Farben and the Norsk Hydro, and Norsk Hydro had already in former years expressed the intention to construct in Norway a magnesium installation with the assistance of Farben. As Farben had received a government order for the construction of a new magnesium installation in Norway, the negotiations between Farben and the Norsk Hydro resulted in the decision to construct jointly a corresponding installation in Norway. Both contracting partners believed to act as private partners and thus to have eliminated interference by the government. The Air Ministry requested, however, in the last minute, through Koppenberg,

the participation of the German Reich through a company belonging to the Reich Air Ministry. Production was never actually carried out. The installations were destroyed by an allied air raid shortly before their completion. On the other hand, almost the entire machinery and the required apparatus were imported to Norway from Germany.

The Prosecution could not give the slightest evidence proving that Farben used direct or indirect pressure in order to influence the Norsk Hydro to conclude the contracts. The former friendly relations between Farben and the Norsk Hydro continued during the war, as was confirmed by the later Director-General Eriksen. It can not be easily understood which of these facts can be considered a spoliation. If the Prosecution believes that its thesis may be furthered by the general idea that the construction of this installation was, allegedly, detrimental to the economic structure or economic order of the country, this argument does certainly by no means apply to the case of Norway. The fact that such industrial installations, as were to be constructed by the Nordisk Lettmetall, fit very well into the economic structure of Norway, is proven by the completion of the installations of the Lettmetall, which is today carried out jointly by the Norsk Hydro and the Norwegian government. Operations have partly already started in these installations, and thus the project has been carried out which, as stated before, had been planned by the Norsk Hydro already long before the war.

I shall now discuss the second problem under consideration, namely, the problem of the financing of this newly-founded firm Nordisk Lettmetall. Nordisk Lettmetall was founded with a share capital of 45 million (N. Kr.) The 3 partners took over 15 million N. Kr. each. Capital requirements which exceeded this amount were procured through credits by the three share-

holders. The only problem considered here is the manner in which the Norsk Hydro procured its share of the required capital. The management of the Norsk Hydro decided on an increase in capital. The Prosecution charges that in this connection the rights of the French shareholders participating in the Norsk Hydro had not been sufficiently safeguarded. The Defense could give undisputable evidence that this assertion is not correct. The French members of the styre (board of directors) agreed to the founding of the Nordisk Løttemetall as well as to the capital increase of the Norsk Hydro. This is amply proven through pertinent documents submitted by the Defense, namely Ilgner Document 261, Exhibit 264, and Ilgner Document 260, Exhibit 263. These two documents were in the hands of the Prosecution until 3 May 1948. In spite of the fact that it results from these documents that the Frenchmen, knowing all circumstances involved, consented to this entire transaction, the Prosecution, which for months was in the possession of these documents, still maintained its illogical viewpoint.

It was a mere coincidence that the Defense was able to find these documents in the last hour, in the document room of the Prosecution, No. 316. I refer, furthermore, to the telegram of the Norsk Hydro, document 262, Exhibit 261, which we also received only at the end of the evidence proceedings. According to this telegram, it results from the records of the styre meeting of 19 June, that all members, therefore also the French members, agreed to the capital increase of the Norsk Hydro. These records are written and signed by Dr. Aubert. The French shareholders of the Norsk Hydro were, at the general meetings of the company, always represented by the Banque de Paris, whose directors were simultaneously the French styre members of the Norsk Hydro. No legal importance can, there-



fore, be given to the fact that these French members of the styre and simultaneous representatives of the French shareholders were not personally present at the general meeting of 30 June 1941 in Norway, which took place eleven days later, after they already had given their consent on 19 June 1941, as stated in the records. In addition, the Banque de Paris repeatedly announced to the French public the fact of the capital increase, before the general meeting took place. The Prosecution could, in this case too, give no evidence proving the fact that pressure had been exercised on the French by Farben in order to obtain their consent to the patical increase. It is characteristic that the Prosecution could not obtain any statement regarding such alleged pressure from any of the former leading partners in these negotiations who are still living, namely the Norwegian Director-General Eriksen and Sir Thomas Fearnley, and the Frenchmen Wibratte, Horeau or Couture. I could, on the other hand, submit evidence to Your Honors, from which the irreproachable conduct of Farben in this transaction results.

The representative of the French shareholders, the Banque de Paris, knew, of course, as well as any other banking firm, that there existed no clearing agreement at that time between France and Norway. A transfer of capital for the exercise of the subscription privileges by the French shareholders was therefore not possible; the I.G. had no influence on this circumstance. The president of the Norsk Hydro, the Swedish banker Wallenberg, of international renown, informed the Banque de Paris that his bank, the Enskilda Bank in Stockholm, was ready to purchase the subscription privileges of the Frenchmen for a German group, and also proposed a rate for these subscription rights. Wallenberg intervened upon a suggestion by Dr. Ilgner, who requested that the rate be fixed by a

member of a neutral nation. Thus it was prevented that the subscription rights be forfeited without any compensation. It is therefore impossible that French shareholders were deprived of their subscription right following a tricky plan, as stated by the Prosecution.

With regard to the participation of my client, it becomes obvious that Dr. Ilgner intervened only after the basic problems concerning the founding of the Nordisk Løtmetall had already been clarified. The reason for his participation was the necessity to finance the new installations in a manner acceptable to all partners. My client never belonged to the styre of Norsk Hydro. He placed liberally at the disposal of the management of the Norsk Hydro in Norway, as well as of the Banque de Paris the good offices of Farben, a fact which results from many documents. There exists not the slightest evidence to the effect that my client did not act in a fair manner in any case.

I believe that the Defense could clarify the case of the so-called spoliation of Norway, and demonstrate that it was actually a business transaction which was carried out by I.G. Farben in a correct manner. The Defense would have succeeded in proving this fact even more clearly if it had been able to make a trip to Norway, as the Prosecution had done, in order to examine the existing documents on the spot and to interrogate witnesses. In spite of the assistance granted by Your Honors to the Defense in this connection, I must point to the unequal means at disposal of Prosecution and Defense, and must invoke in this case vis major preventing the collection of evidence.

I am, however, convinced, that the evidence submitted is sufficient in order to establish the fact that my client is

not guilty with regard to this count of the Indictment.

The same is true regarding any connection established by the Prosecution between my client and an alleged plunder by Farben in Poland and Russia. The statements made by the Prosecution concerning this matter are only touching the outside of the events considered by the Prosecution as looting; it is therefore not necessary for my client to discuss them any further. Presentation of evidence has refuted the assertions of the Prosecution. As to the legal position, it is sufficient to point out that all forms of criminal participation require the knowledge of those elements which constitute the offense. The Prosecution has not even attempted to give this evidence although the burden of proof in this matter is incumbent to the Prosecution.

To Count 3 of the Indictment:

I may be brief, regarding this subject, as my client had, in his sphere of competence, nothing to do with the employment of forced labor, concentration camp inmates and PW's; he never managed a factory and no special evidence was, therefore, submitted against him by the Prosecution in this point. In spite of this, the Prosecution believes, however, to be able to charge my client on this count with the knowledge of employment of forced labor, concentration camp inmates and with knowledge of their alleged ill-treatment, which the Prosecution considers as part of the general responsibility of the Vorstand. I refer to the basic statements of my colleagues as to the problem of collective responsibility. Dr. Ilgner's special activity on behalf of Farben, as well as the decentralization in the business management of Farben which was already described as necessary and extensive, show very clearly that no convincing argument can refute his testimony



in the witness stand. As a businessman, he did not handle these matters. The organization Berlin NW7 was merely an office. He had no more knowledge whether foreign workers were employed in Germany and by Farben than any other German at that time. His frequent absence on trips also serves to explain the fact that my client did not learn of the employment of the concentration camp inmates by Farben and had no clear conception of the situation.

Dr. Ilgner had an opportunity to show his attitude towards the foreign workers when air raids forced him to transfer his plant from Berlin to Bugk and to employ several foreign workers and PW's. I believe I may state without any exaggeration that he cared like a friend for these people who were partly refugee families. He cared in an exemplary manner for their personal well-being. He instituted every possible social care which conditions permitted. He founded a Kindergarten, cared for the education of children, for religious services, the showing of movies. He organized musical soirees and made untiring efforts on behalf of the foreign workers and PW's. He followed thereby a tradition of the I.G. which was known in entire Germany for the perfection of its social care. As to count 3 of the Indictment too, no evidence has been adduced by the Prosecution which would prove the guilt of my client.

Your Honors, I am now at the end of my statements. May I say that the Defense did not treat its task lightly. We have submitted adequate rebuttal evidence to Your Honors, even when the statements of the Prosecution were not only irrelevant, but also erroneous combinations, if that seemed necessary in order to clarify the facts of the case or to facilitate the understanding of the Court. Dr. Ilgner was, in the course of these proceedings, given the opportunity to render a

detailed account of his activity as a member of the Vorstand of the I.G. Farbenindustrie Aktiengesellschaft. We believe to have completely destroyed the net which ignorance and prejudice have spread over my client, and in which the Prosecution has caught itself now, as it appears to us. We are convinced that Your Honors will render a fair judgment in the best tradition of democratic Justice. I, therefore, propose that my client Dr. Max Ilgner be acquitted.

THE PRESIDENT: The Tribunal will rise for its recess.

(A recess was taken)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: The Tribunal will hear Dr. Eisenblatter, who will present the argument on behalf of the defendant Jaehne.

DR. EISENBLATTER: Dr. Pribilla is ill and, therefore, I ask permission to read his plea.

Mr. President, Your Honors.



The profession shapes the man. Jaehne is the type of sober engineering-technician whom the constant occupation with materials has trained into an absolutely objective, incorruptible observer and sceptic, to whom the passion-born confusion and exaggeration of the Third Reich were utterly repugnant.

Jaehne obtained his knowledge and experience during a long career in chemical plants. The position of an engineer is different there compared with other industrial branches. In the regular factories, the engineering technician is the manager of the plant, who utilizes his own inventions and those of his particular field and thereby determines the kind of production. In contrast with this, in the chemical plants it is the chemists who are the managers of the plant and who determine the direction and the way. The main task of the engineer in the chemical plant consists in building and maintaining the plants and equipment for the products planned by the chemists. He furthermore cares for the so-called utilities, thus, for instance, the equipment for generating electricity and steam, the transport installation, etc.

In Farben, therefore, it was the chemist who decided what had to be manufactured and what production plants, for instance, for sulphuric acid, chlorine, synthetics, etc., were to be built. Concerning these production installations, therefore, the engineer was consulted only on the problem of how the building should be done. With reference to the utilities, he had to state, in addition to the foregoing, what utilities were needed and how these were to be built. These established facts show the limits which controlled the activity of Jaehne within the I. G.

Jaehne was since 1931, chairman of the Teke or Technical Commission, since about 1934 a member of the TEA (Technical Committee) and in 1934 became a deputy member and in 1938 a full member of the Vorstand.

The TEA had, until 1933, a considerable influence in the field of investments. As was shown by the evidence, however, the TEA lost this influence after 1933, since the State interfered to an ever increasing degree with the free economy. During the war, practically all investments were those ordered by the State, as others were not permitted. Quite often the TEA was informed of new installations only after they had been already started or even after they were already functioning.

One of the 30 committees of the TEA was the Teko, a kind of study group, which consisted of the 7 leading engineers of the Sparten and larger plants. Jaehne, as the chairman of the Teko, was merely "primus inter pares" and not by any means the superior of the other engineers. The Teko, too, had to define their attitude to credits which had been asked for new installations, but only from the technical engineering standpoint. Consequently if new production installations were planned, they did not define their attitude as to whether the plant was to be built. The examination of this problem was reserved for other commissions.

This forming of opinion concerning requests for credits, so often mentioned by the Prosecution, was by no means the main activity of the Teko. As the central body of the engineers within Farben, it had to care for a suitable organization of the entire engineering set-up, to make the technological experience of one plant available to the others and to keep up the training of the young generation of engineers and skilled workers. Above all, it had to push ahead the research activities in the field of engineering. This was a task which Jaehne as the chairman of the Teko pursued with great energy. In the Research Departments for Engineering and Technology in Hoechst, the newest developments in the field of physics were examined, evaluated and turned to use in industry.

The defendant Jaehne, as the chairman of the Teko, was

particularly active in these great and purely engineering-technological problems of research and the training of the other Farben engineers for the benefit of the entire organization.

Jaehne's relations to the Party.

Jaehne gave all he had to these considerable tasks in the field of engineering and technology. He had neither the time nor the ambition to occupy himself with other matters, especially not with the politics of the Third Reich.

I have demonstrated his personal ways of thinking by numerous affidavits. Until 1933 he belonged to the German People's Party (Deutsche Volkspartei), to that party which, under the leadership of Stresemann, for many years Minister of Foreign Affairs, strove for mutual understanding with the Western powers and also achieved it. After the dissolution of this party, he remained loyal to a circle of former members of the Volkspartei who continued to meet in secret.

Upon the direct demand of the Gauleiter, Jaehne joined the Party in 1938. At that time, he faced the choice of either resigning and handing over his position to somebody else, who would have been more accommodating to the wishes of the Party, or to remain at his post and thereby help the plant and the men who had been entrusted to him. Every sensible deliberation must have induced him to choose the second alternative.

His personal attitude did not change in the least through this formal step. Jaehne did not disguise his conviction and expressed his opinions "with great personal courage", as is stated in one of the numerous affidavits. He helped political persecutees. His personnel policy was objective and just, and he resented any political influence exercised by the Party. Numerous witnesses testified that this attitude was known not only in the works, but also in the Party, which considered him "politically unreliable", to use the then customary official term. This became apparent on



many occasions, particularly on Jaehne's 60th birthday, when it was intended to bestow upon him the honorary degree of Doctor for his merits in the field of chemical engineering, but this was thwarted by the objections of the Party. After 1945, Jaehne was classified as "exonerated" (entlastet) by the Denazification Board and placed in Group V. He received from the Military Government the decision: "May retain present position".

Jaehne's abilities as technician and industrialist were the cause of his holding many honorary public offices. He already held most of these offices prior to 1933. He was, for instance, a leading official in associations for the prevention of accidents and in other technical corporations. After 1933, the Industry often approached him for his assistance in preventing the endangering of free enterprise by the appointment of nazi-friendly elements. Jaehne never refused his help on these occasions. So he became Chief of the Industrial Department of the then Hesse Chamber of Commerce and Industry and also of the Occupational Representation of the Economy. He received this appointment on the proposal of Industry, which relied on him particularly for protection against Party interference.

It was precisely his position as Chief of the Industrial Department that enabled him to exercise his influence and so to prevent all too great damage being done. He pointed out, for instance, to the industrialists the necessity of decent and exemplary treatment of foreign workers. He also succeeded in winning the fight concerning the apprenticeship training of youth and carried through his point that apprentices should be trained by the works and not by the Party (German Labor Front- Dinta).

At the suggestion of the District Office of Economic Affairs, Jaehne was appointed Military Economy Leader (Wehrwirtschaftsfuehrer) by the Reich Ministry for Economic Affairs as late as 1943. This was merely a title which did not constitute any special honor for a man in his position.

## II. JAEHNE's activity in the Hoechst Works and in the Maingau Works.

After this description of Jaehne's activity within the entire I.G. Farben which has been strengthened by the evidence produced, and of the role he played in public life, may I now turn to his work with the Maingau works and particularly with the Hoechst works.

### a) Position as Deputy Betriebsfuehrer.

In 1932, Jaehne was transferred from Loberkusen to Hoechst as Chief Engineer, in order that he should modernize the outdated works as economically as possible. All the engineering departments of the Hoechst works were subordinated to Jaehne. In 1938, i.e., shortly before the outbreak of war, Professor Lautenschlaeger was appointed manager of the Hoechst works and of the works combine Maingau. Jaehne was appointed his deputy.

The regional centralization of the various works within the works combines was carried out solely for the purpose of better mutual cooperation and coordination of production. The various works remained entirely independent and had their own independent Betriebsleiter. In particular, Professor Lautenschlaeger did not exercise any special influence in the works subordinated to him within the Maingau works combine, but respected

the independence of the individual Betriebsfuehrer. Jaehne was broadly informed of all questions concerning the management and in the absence of Professor Lautenschlaeger decided independently on urgent matters.

b) Air Raid Protection.

The Hoechst works were often mentioned by the Prosecution in its documents in connection with the air raid protection question.

Dealing with this question, I should like to point out first that, since 1926, air raid protection installations had been allowed in Germany by the victors of the first world war, that they constituted a merely passive protection such as the Fire Brigade and the Disaster Protection Squad (Katastrophenschutz) and that consequently intention to participate in the preparation for an aggressive war cannot be proved. In connection with these general questions, may I refer to the statements submitted by my colleague, Dr. Berndt, and myself deal only with the charges filed against the Hoechst works and particularly against Jaehne.

Air raid protection questions concerning the industry fall into the sphere of technical engineering, and within Farben it was, therefore, the Technical Commission (Toko) which played an important part in this connection. In June 1933, when Jaehne was chairman of the Toko in Hoechst, these works were made by the management of the I.G. the principal agency for questions concerning industrial air raid protection and, at the suggestion of ter Meer, Jaehne was entrusted with the handling of all air raid protection questions. This was not done because Farben intended to be particularly active in the field of air raid protection; on the contrary, Jaehne was to see that none of the works should do too much or spend too much money in this respect, owing to the pressure of the Party or of the Wehrmacht.

As was clearly proved by the documents produced by the Prosecution, Jaehne actually repeatedly protested against the demands of the authorities and tried by all means to reduce costs and to put on the brakes.



In Hoechst itself very little was done for air raid protection. The only large air raid shelter was built during the last year of the war. In any case, at the beginning of the war, Hoechst was not prepared for air raids and this fact seems to me to refute all the extensive conclusions of the Prosecution.

c) Mobilization Plans.

The Prosecution submitted a number of documents pertaining to the question of mobilization plans. These plans happen to originate from the Hoechst works, because the archives of the Hoechst works containing the entire correspondence pertaining to mobilization remained undamaged. These documents do not contain any evidence that the Hoechst works made any preparations for an aggressive war. These documents consist of letters addressed to Hoechst by official agencies or by the Department Vermittlungsstelle-W, upon order of official agencies, and of replies to these inquiries. These documents contain nowhere any evidence that steps taken in Hoechst were any different from those usually taken in a modern State as precautionary measures for national defense.

Jaehne's activity in connection with the so-called quota (production) plans (Belegungspläne) consisted solely in stating how many people, how much coal and how much current would be required for the production as outlined in the quota (or mobilizationproduction) plans.

III. Production of the Hoechst Works.

The Prosecution in connection with the preparations which, in its opinion, were made for aggressive war, dealt also with the production of the Hoechst works. The evidence produced thoroughly clarified this point also.

Hoechst is one of the oldest works of the I.G. and parts of it were rather outdated. In many respects, it did not develop to the same extent as other large works of the I.G. Only from 1935 approximately onwards was it possible to carry out a certain modernization of the works.

Hoechst produced inorganic products such as sulphuric acid, hydrochloric acid, nitric acid, chlorine, caustic soda; and furthermore numerous intermediates, particularly those for the production of dyestuffs. It produced primarily high grade dyestuffs. It had the largest solvents factories in Germany and manufactured varnishes and plastics. In the nitrogen field it produced regularly enormous quantities of calcium nitrate for use as fertilizers. The production of the pharmaceutical department of Hoechst in the field of medical drugs was considerable. Under the management of the defendant Lautenschlager, its reputation became known all over the world, on account of its production of medical drugs, such as Pyramidon and Salvarsan, and on account of its research work and achievements in the field of hormones and vitamins.

Investments in the Hoechst works were comparatively insignificant after 1923. During the entire-twelve-year period from 1933 to 1945, only about 26 million Reichsmark were invested which means less than 1% per annum of the total peacetime value of the Hoechst works. The investments hardly equalled one sixth of the usual depreciation deductions.

Even during the war, no substantial changes were made in the production program of the Hoechst works. The works worked only on one war contract for the delivery of 375 tons of fog acid (Nebensaure) per month.

That was in relation to the other production, e.g. 6-8,000 tons sulphuric acid a month, over 17,000 tons nitrogen fertilizer monthly etc., a quantity so small that it hardly counted. It may well be that, of the large production, especially in acids and intermediate products, a certain fraction may finally have found its way through some uncontrollable channels into other factories and been used in the production of explosives. It lies after all in the very nature of the chemical industry that the same intermediate products and acids can be used both for the production of dyes and other peace commodities and for the manufacture of war products. This, however, does not alter the fact that at all times the production was intended almost exclusively for civil requirements and for

export. Explosives, such as for example Hexogen, were demonstrably never produced in Hoechst.

#### IV. Knowledge of Aggressive intentions.

The Works Management of Hoechst had no more knowledge of the military intentions of Hitler than had other Germans. So far as Jaehne in his position in I.G. as a whole could see, everything pointed against an aggressive war. In the summer of 1939, approval was given for the construction of a new color-film factory, on the Polish border. At the same time, war essential patents were being supplied to large foreign concerns. The I.G. took a participation in an English magnesium factory. It built a dyestuffs factory in England. In the stockpiling of chemicals, Germany, as the report of the U.S. Strategic Bombing Survey shows, was not prepared for a war.

Among other things, the fact that the two English chemists who visited the Hoechst Works in late August 1939, were shown frankly everything they wanted to see, proves that the works management of Hoechst suspected nothing of an impending war. At the same time, and on the same journey, they had been denied inspection of some plants in other, including French, factories.

Further evidence of how far the works management of Hoechst were from believing in an impending war, is given in the statement of the witness Poehn, who described here in detail two cases in which Jaehne, only a few days before the outbreak of the war, refused the stockpiling of food provisions and requirements for the Air Raid Protection. At the same time, Jaehne clearly expressed his view that nobody in Germany would be so mad to unleash a war.

According to all they saw and heard, this was the way the works management Hoechst was obliged to think. This attitude, however, also corresponded with the whole nature of the scientist Lautenschlaeger and the sober technician Jaehne, both brought up in science and accustomed to strictly realistic thinking than which nothing was further removed from the sphere of an emotional fantast, such as Hitler.



Indictment Count II: Plunder and Spoliation

Jaehne is named in the second count of the Indictment in connection with the oxygen works in Alsace-Lorraine and Luxembourg. In the years 1940-1941, the I.G. leased the oxygen and acetylene works in Metz-Diedenhofen and in Strasbourg-Schiltigheim, as well as the oxygen works Rodingen.

During the war, a great deal was destroyed in Alsace-Lorraine, especially bridges, traffic facilities and so on. In order to restore the economy and to bring about orderly conditions in the occupied territory, it was necessary to take the quickest means to remove the traces of this destruction. For this purpose, welding and cutting tools were required and large quantities of oxygen for them. It is a very troublesome matter to transport oxygen in the familiar heavy iron containers.

In consequence of the bad transport position, it was not possible to keep the Alsace-Lorraine District sufficiently supplied from Germany. In the interests of Alsace-Lorraine economy, therefore, its own oxygen and acetylene works had again to be brought into production.

The owners were not there. Therefore, the German Occupation authorities communicated with the suppliers of the same product in Germany, namely the Vereinigte Sauerstoffwerke (50% I.G. and 50% Gesellschaft Linde) and requested them to put the works again into operation. This was not a simple matter. The container-park was for the most part no longer existent. The works in Schiltigheim had been entirely evacuated by their French owners; all the machinery had been removed. The I.G. now set up in the vacant rooms of the Schiltigheim factory two modern oxygen plants, and only through this were the empty rooms once again converted into a factory. In the same way, the other works were again put into operation and modernised with new machinery belonging to the I.G. Furthermore, oxygen and acetylene containers were provided for the works out of the stocks of the I.G.

The entire production in the Alsace-Lorraine oxygen works was intended solely for the restoration of the Alsace-Lorraine economy and indeed remain-

ed there without exception. On the retreat of the Germans, the works remained behind undisturbed together with the property of the I.G. For the owners of the works, the position therefore was that the value of their works was not reduced by the activity of the I.G., but on the contrary considerably increased.

Jaehne, as a pure technician, had nothing to do with the purchase and lease negotiations. The party responsible for this commercial part of the oxygen sphere was the "Chemicals Sales" ("Verkauf Chemikalien") Department, under the direction of the Vorstand member Wohrer-Andreas/. The technical part of the oxygen sphere was conducted by Prof. Holler, under Jaehne, Jaehne's activity was confined to sending the necessary engineers and machinery to the works.

Jaehne, as the technical oxygen specialist, was only afterwards instructed regarding the concluded contracts. He had no grounds for assuming that it could be a question of plunder and spoliation. He knew that, for the sake of the restoration of the economy and thereby of the maintenance of order in the occupied territory, it was urgently necessary to put the oxygen works again into operation. This measure was within the framework of Art. 43 of the Hague Regulations for Land Warfare. The decision as to the form in which the investments necessary for the beginning of production could be secured was a matter for the business men and lawyers. What Jaehne did know was that nothing was taken out of the country, but that, on the contrary, much was put into it. The I.G. had to a very large extent invested with machinery and containers. The production was intended for the country and remained in its entirety in the country.

Even putting aside for the moment that Jaehne did not participate in the agreement negotiations, he was as little likely as any other objectively minded person to suspect in this situation and these negotiations that they could be regarded as plunder and spoliation.

7 June-A-PI-23-8-Stewart (Int. v. Schen)  
Court No. VI, Case VI

Indictment Count III: Slavery and Mass Murder,

Count III of the Indictment charges the defendants with the employment of foreign workers in the I.G. works.

I. Collaboration of the Toko. (Engineering Committee).

The defendant Jachno is especially charged with having, in his capacity of Chairman of the Toko, supported the foreign worker program by approval of the building of huts.



The Teko did in fact take part in the credit applications for the building of huts. The applications, however, were only examined by them, after the necessity of the hut construction had been investigated and confirmed by the Soko (Social Committee). All the Teko had to do then was to examine from the technical engineering standpoint, whether the mode of construction was practical, and especially whether sufficient auxiliary installations, such as dining rooms, kitchens, sanitary equipment, had been provided for, also whether the prices were kept within suitable limits as it was a question of the standard type of hutments in the style of the huts of the Reich Labor Service, the investigations were practically confined to ascertaining that sufficient auxiliary installations had been provided for.

According to all that has been put forward in this trial, the huts were generously and suitably constructed and were available in sufficient quantity. Therefore, in my opinion, no research can be levelled against the defendant Jachne on account of the recommending of the construction. A reproach, could, however, have been justly made against him if he had refused to approve a sufficient number of huts. For then the foreign workers would have had to live far more primitively and closely in the quarters already existing. The recommending of the huts could only work out to the benefit of the foreign worker.

A complete refusal to examine these credit applications with the intention of sabotaging the allocation of foreign labor was, in the long run, practically impossible. The only consequence would have been that Jachne would have been thrown into a concentration camp for sabotage, if nothing worse had happened to him. The I.G. was compelled under authoritative regulations to employ the foreign workers necessary for the fulfillment of their production orders. A refusal would have been punished as sabotage and treason.

## II . Plant Management Hoechst and the foreign workers. -

a.) During the war foreigners were employed at the Hoechst plant the same as in other large German plants.

1) Professor Lautenschlager was Betriebsfuehrer of the Hoechst plant, and thus was the responsible man, according to the law. The question, as to what extent Jaehne, in his capacity as Professor Lautenschlager's deputy, was responsible for the employment of foreigners, will be left open. Jaehne himself stated on the witness stand that he would willingly and with a clear conscience take the responsibility, as no unlawful employment and treatment of foreign workers took place at the Hoechst plant. I would, therefore, like to deal here with the question of the employment and treatment of foreign workers on behalf of the Plant Management of Hoechst.

2) It has already been fully discussed that the I.G. plants only accepted foreign workers when they were forced to do so. The Hoechst plant made no exception, if only because of the difficulties regarding their employment in the chemical plant and the costs involved. For instance, Hoechst had to pay an additional RM 2,877.-- for every individual foreigner. In any case, Hoechst always tried to obtain German workers. Their requests, however, were turned down by the authorities with the explanation that the German workers must be reserved for plants engaged in essential war production. But Hoechst was not one of these. That is why the percentage of foreign workers remained comparatively small, between 22 and 24%. There were only about 2400 at Hoechst, at the most about 3000 foreign workers out of a total staff of 12,000 workers. The other Mainfrau Plants had independent Betriebsfuehrer who were solely responsible under the law. No evidence has been submitted that an excessive number of foreign workers were employed there, nor that they were treated badly.

b) Working conditions.

Evidence has shown that the management of the Hoechst plant did everything possible for the foreign workers, once they had to accept them.

1) The plant leader of Hoechst, Professor Lautenschlager, expressed in many discussions with his collaborators the standpoint of

the plant management, which was as follows: "People have been entrusted to us who will work for the plant. If we expect from them satisfactory work, we have to see to it that they feel free, and work without coercion. We must treat them well". These directives of the plant management were adhered to and care taken to see that they were strictly observed.

The foreign workers at the Hoechst plant worked together with the Germans. They did the same type of work under the same conditions. Later I shall refer in more detail to the result of the evidence on the question of the foreign workers, as the directives of the plant management were the same for foreign workers and prisoners-of-war.

2) Apart from foreign workers, there were also French prisoners-of-war at Hoechst, but these were few in number and worked only for a short period. The Hoechst management took special care of these prisoners-of-war. Also in this respect Professor Lautenschlager issued a directive by the management. It reads: "The prisoner-of-war is our honorable collaborator. We shall treat him as we would like our fathers, brothers, or sons to be treated, should they have the misfortune to become a prisoner-of-war." Characteristic of the attitude of the plant management towards prisoners-of-war is the incident, which has been testified to here, when the witness Kocher rescued a wounded American airman from an excited crowd on the plant site and brought him to safety. At the time his action was fully approved by the plant management who shielded him from the Party officials, for whom at that time Goebbels' lynching order was already law.

It was in no way contrary to international law to employ prisoners-of-war at the Hoechst plant, as it was not directly connected with actual warfare. Wehrmacht officers, who had been specially trained, constantly checked whether these regulations of the Geneva Convention were complied with. For the rest, the prisoner-of-war were transferred to Civilian Workers' status as early as June 1943.



3) In connection with Jachne the Prosecution also mentioned the employment of prisoners-of-war at the Griesheim-Autogen plant. Griesheim-Autogen was not a chemical, but a machinery and fittings factory, which manufactured tools for welding. During the war the factory supplied a small part of its production to Wehrmacht workshops and repair depots. These needed welding and cutting tools just as much as hammers, nails and other tools. I do not consider the employment of prisoners-of-war on the production of such ordinary tools, to be contrary to law any more than their employment in a screw factory, part of whose production is delivered to the Wehrmacht. This work was certainly not "directly connected with actual warfare" as laid down in Article 31 of the Geneva Convention. But Jachne was no man of International law. He knew that the employment of those prisoners-of-war was constantly supervised by the Wehrmacht and that he could rely on their judgment.

4) The working hours of all foreign workers, including the prisoner-of-war, were the same as those for the Germans, i.e. between 53 and 56 hours per week. The plant management was in a difficult position in regard to the labor offices, whose aim it was to save thousands of workers at Hoechst by extending the working hours. But Professor Lautenschlaeger and Jachne won their argument that if the working hours in the chemical industry were extended, the danger of accidents would increase.

5) If the Prosecution states that foreign women were also employed at Hoechst, this is correct to a small extent. But that was nothing special, as women had always been employed at Hoechst, and during the war men who had been called up by the Wehrmacht were partly replaced by German women. Later on Russian women were employed at the same places of work together with German women at Hoechst.

Some of the Russian women had come to Hoechst with their families. A lot was done for these women. The families were able to live together. There was a well equipped Kindergarten for small children, with a German teacher and women from the East to take care of them. For the older children a Russian school was set up with a Russian teacher from Minsk.

The plant had issued detailed instructions for the protection of the women and children. Children under 12 years of age could not be employed. On the other hand, a few boys between 12 and 14 years of age were employed at the plant, but only half a day and at the express wish of their parents. They were only employed on a very light work, however, such as running errands, cleaning bicycles, etc. and more as a matter of form. A few older women also worked at their own request; they were employed in the camp in cleaning the huts and in the sewing rooms. Every foreigner had a medical examination when he was engaged and was only given work which was suitable according to his strength.

c) Treatment, discipline.

The plant management had issued strict directives that the foreign workers were to be well and justly treated, especially during their work at the plant.

1) Naturally it was not easy to maintain discipline and prevent punishable offenses in such a large plant as Hoechst, which had 12000 workers and employees. Nevertheless, attempts were made at Hoechst to take precautionary measures to prevent punishable offenses, such as thefts etc., from being committed. But if they did occur, they were not immediately reported to the police, and an effort was made to settle the matter at the plant. Even when the factory guards were made auxiliary policemen in 1944 by official order, Hoechst succeeded in reserving the right for the plant management even after 1944 not to pass on denunciations by the factory guard.

In an official regulation which I myself saw, the Betriebsfuhrers were made responsible for the maintenance of discipline. This instruction authorized the administration of admonitions and the imposition of fines. In serious cases, the offender was to be reported to the Police in order that punishment might be administered, or the culprit might be sent for a short period to a disciplinary labor camp (Arbeitserziehungslager).

Such punishments were not a voluntary affair on the part of the

Betriebsfuehrers. I submitted a circular letter from the Gau Commissioner for the Frankfurt area, in which the Betriebsfuehrers themselves are threatened with punishment if they do not make sufficient use of their authority in the matter of discipline. Nevertheless, the Plant Management of the Hoechst works endeavored to restrict the number of punishments imposed to a minimum. The foreign workers were, in fact, treated with more leniency than were the German workers. For example, in the case of the Prosecution witness de Bruyn, a Belgian, who absented himself from work without permission on 27 working days out of 466, no action whatsoever was taken.

Naturally, in the course of the years, there were cases among the 12,000 workers in which it was impossible to avoid imposing a punishment. A fairly old, experienced lawyer was entrusted with the organization of the disciplinary system, the correct use of authority in the maintenance of discipline being thus guaranteed. Throughout the war, only 4 reports were received of cases of service infringements of disciplinary regulations, entailing the removal of the offender to a disciplinary labor camp. The persons concerned had already committed from 12 to 15 offenses for which they had been admonished or for which fines had been imposed. Having again been warned, they were again found guilty of committing serious offenses, with the result that there was no solution other than to send in a report. Before the report was compiled, the previous offenses were examined individually in the presence of the Workers' Council (Arbeitervertrauensrat). The workers remained from 3 to 4 weeks only in the disciplinary labor camps and then returned to the works.

2) As previously stated, there were the exceptions, as was inevitable in such a large works, but these exceptions were nevertheless extremely rare. While the authorities advocated a policy of maintaining discipline by means of punishment of the offenders, Hoechst's primary effort was directed towards the prevention of offenses by practical instruction of the workers. On the other hand, the works took severe



action against any German who might be guilty of an offense against a foreign worker. I have given some striking examples of this fact, and will deal with these examples in greater detail in the Trial Brief. The cases which I have quoted show with absolute certainty that the standard on which Germans were judged in the Hoechst works was much more strict than that set for foreigners, and that the foreigners were energetically protected against any excesses on the part of the Germans. The fact that the foreigners are referred to as "foreign fellow-workers", as can be seen from the documents submitted to the Court, is characteristic of the attitude of the Management of the Hoechst Works. The Works Management of the Hoechst works looked upon the foreign workers, not as slaves, as the Prosecution maintains, but as their fellow workers.

d) General Care of Workers.

In consequence of this attitude, the Works Management did everything possible to ensure good accommodation and food for the foreign workers. Lautenschlaeger demanded that the Chief of Social Welfare Department (Sozialreferent) make every effort to bring about a steady improvement in the food and accommodation provided for the foreign workers, and that, with this aim in mind, he do everything within his powers, regardless of expense. Despite the fact that he was severely overworked, he personally supervised and inspected the food and accommodation provided for the foreigners.

1) Accommodation.

The foreigners were housed, as were the German fitters, some in one of the works billets, the so-called "bachelor-hostel", others in hotels and the remainder in hutments. These hutments were large and spacious. They could be heated and were comfortably equipped. Jachno issued coal freely in excess of the normal ration for the heating of the billets, even to the extent of infringing war-time regulations, coal which was officially intended for the power supply of the works. The rooms were kept clean at the expense of the works, by special teams of charwomen. The camps are still in existence today and are mostly occupied by the so-called "Displaced Persons". The individual nationalities had their special men of confidence who frankly brought all their wishes and requests before the Works Management.

2) Food.

A particularly efficient and capable expert, in the person of the witness de Vries, was put in charge of catering for the foreign workers. When he took up his duties in 1942, Prof. Lautenschlaeger, the Works Manager, expressly told him, "All the money you may require is at your disposal. But whatever you can. Expense is no object. If these people are to work for us, they must be decently fed." De Vries took full advantage of this generosity, and whenever he could buy unrationed food, he did so, buying hundreds of thousands of marks worth of food to supplement rations. De Vries took care that the butchers delivered only the best meat, and that only high grade food was served.

Six kitchens were built for the foreign workers. They were situated at a distance from each other, and were equipped with the most modern refrigerator installations.

Following the occupation, they proved adequate for the

feeding of five times the number of persons, a proof of the generous scale on which the kitchens had been established. The individual nationalities had their own kitchens in which their food was cooked. The great variety of foods served and the imagination used in their preparation can be clearly seen from the original menus which have been introduced. They also indicate the abundance of food which was available, especially of the most nutritive types of food. For example, the foreign workers received 500 grams of meat per week. I have also succeeded in locating a former Russian cook who states in his affidavit that the food served to the Eastern workers was plentiful and of good quality also.

The good quality of the food served to the foreign workers at Hoochat had such a reputation that attacks were made on the works by the Party and by the civilian population, on the grounds that the foreign workers were receiving better food than the German civilian was normally in a position to buy for himself. It is significant also that the German chemists employed on night shifts in the works, requested that they might be allowed to eat in the Russian kitchens instead of eating German fare, because the food there was better.

Tables of weights kept by the works doctors show that far from decreasing, the average weight of the foreign workers showed a tendency to increase gradually. Naturally, the conditions governing the housing and feeding of foreign workers were immediately examined by the advancing American troops. When taking over the foreign workers' camp, the American Major Maddigan expressed to the witness de Vries his recognition of the good food provided for the foreign workers, and commissioned him to undertake the catering for "Displaced Persons".

### 3) Clothing.

The Hoochat Works also catered on a generous scale for



the clothing of the foreign workers. The foreign workers coming from the East, the majority of whom were very poorly clad, were provided with new clothing within a very short period. Special tailors' shops and cobblers' shops were provided for the workers. The works also provided working clothes. The clothes were laundered in the works' own laundry.

4) Medical Attention.

It goes without saying that a plant of which the Betriebs-fuehrer was a doctor and a scientist of Prof. Leytenschlaeger's stamp, made an unusually great effort to give adequate medical attention to its workers. The works had a first rate infirmary of its own, equipped with waiting rooms and consulting rooms. This was open to foreign workers and Germans alike. In addition to the 2 German doctors, patients were treated by 1 German lady doctor, 1 Russian lady doctor and 1 French doctor. The drugs proscribed for the foreign workers came from the Works' stores and particularly valuable medicaments, which could not be bought by the normal consumer in the shops, were used in dispensing their prescriptions. As far as medicaments were concerned, then, the foreigners were in a far better position than the Germans not employed in the works. A doctor was on duty day and night to deal with works accidents. A large hutment equipped as a sick-bay was available for the accommodation of in-patients. In serious cases, the patients were transferred to special hospitals. Thus, for example, a Russian who had methanol poisoning spent 1 and a half years in various hospitals. As many witnesses confirm, the foreign workers had complete confidence in the medical treatment. One can best see how great their confidence in the doctors was from the medical card index, which is still in existence today. I have shown with the help of this card index the conscientiousness with which the patients were treated, and have also

proved how, on many occasions, a doctor was called in, even for a minor complaint.

The comprehensive medical attention received by the foreign workers reflects very special credit on Professor Lautenschlaeger personally. I have submitted evidence in proof of the fact that, despite extreme overwork, he personally supervised the medical service, and when necessary, sprang into the breach himself and gave medical attention.

Such an attitude on the part of the Works Manager was bound to have its effect. The result was the pleasing fact that the average mortality rate among the foreign workers at Hoechst was less than that of the population of the German Reich during the peace-time years 1931 to 1936.

b) Payment of Workers and Recreational Activities.

I could also bring much evidence to prove that Hoechst made considerably more than usual endeavors to regulate the payment of the foreign workers in accordance with official instructions and to foster cultural interests amongst them. I shall deal with the subject in greater detail in the Trial Brief.

c) Affidavit of de Bruyn.

In connection with the whole subject of the employment of foreign workers at Hoechst, the Prosecution has submitted one single affidavit, deposed by a former foreign worker. The person concerned is de Bruyn, formerly a carpenter and now an employee of the Belgian Government. I have refrained from cross-examining this witness, as the affidavit contains such obvious inaccuracies that I preferred to submit evidence to refute the statements contained in it, thus bringing to light much more directly and completely the circumstances, which did, in fact, prevail at Hoechst. Within the limits of this brief plaidoyer, I propose to restrict myself to a few

points in which the conduct of the deponent himself demonstrates the inaccuracy of his statements.

1) De Bruyn states in his affidavit that in June 1943, he was taken from the prison at Antwerp via Aachen direct to Hoechst, a statement by means of which he obviously intends to stress the fact that his work in Germany was not on a voluntary basis.

As the documents on the employment of foreign workers in Hoechst have not been destroyed, it has been possible to find the deponent's employment card. The latter shows that the deponent came to Hoechst as a member of the staff of the Belgian firm of De Witt, Antwerp, which lent workers to Hoechst. It was not the policy of this firm to send workers recruited on a compulsory basis. On the contrary, at least a proportion of the workers had already been employed by the firm for years, and formed a part of the permanent staff. The fact that during the short period of his employment at Hoechst, a total of 39 days, de Bruyn was granted home leave no less than three times, and returned each time of his own free will, proves conclusively that he was not employed in Germany on a compulsory basis.

2) The deponent states that conditions of life at Hoechst were "inhuman". At least twice as much food would have been required to still the pangs of hunger. The hutments were dirty, and were alive with vermin. The contents of the straw palliasses were never changed. The camp was surrounded with barbed wire and was guarded by the factory police.

These assertions are roundly contradicted by the wide range of evidence submitted by me on the true conditions. Particularly if one compares it with present conditions in Europe, the food was more than adequate, as is proved by the menus submitted to the Court alone.



The hutments were cleaned daily by special teams of char-women paid by the works. They were regularly deloused and the contents of the straw palliasses were frequently changed. Only the prisoners of war camp was surrounded by barbed wire, not the foreign workers' camp. The factory police had nothing whatsoever to do with the foreign workers' camps.

For the rest, the affiant's own conduct give the lie to his assertion in this case also. During the period in which he worked at Wiesbaden-Biebrich, he continued to live at Hoochst, although this involved a daily journey to and from his place of work, an undertaking which, in view of travelling conditions at that time, was no very pleasant one. He would certainly not have done this had he been dissatisfied with the treatment, accommodation and food at Hoochst.

3) Furthermore, de Bruyn claims that he worked 56 hours per week at the beginning, and that the hours increased, until he was finally working 12 hours per day, including Sundays.

De Bruyn's employment card again clearly refutes this statement. Up to the time of his departure from the works on 14 March 1945 (a total of 527 work days), he worked 3933 hours over 468 working days, giving an average of 8.5 hours per day. Throughout the whole of this period, he worked on only 8 Sundays.

4) Finally, the deponent states that the medical treatment was "nothing short of inhuman". Thus it was forbidden to be sick, as it was literally more than one's life was worth. Foreigners were refused permission to enter the infirmary which he admits was first class. Injured workers received no treatment whatsoever.

The Tribunal will remember, on the other hand, the statements made by the defendant JAEHNE and witness POKEN and HIRSCHEL on this point. In particular, the Tribunal will draw its

conclusions from the original medical certificate of the deponent de Bruyn which was submitted.

Fortunately the affiant's medical file card was still available. It shows that in the 1 3/4 years of his stay in Hoochst de Bruyn reported to the infirmary no less than 20 times, mostly for minor ailments, apart from visits for changing bandages. The first time he came because of a carbuncle and two days later because of a surface wound. In January 1944 he was given hot air and massage treatment for rheumatism of the thigh. 6 days later he appeared again because of a carious tooth and was sent to a dentist. In December 1944 he reported because of bronchial catarrh and received valuable medicine. The remarkable thing is that at that time he was not in Hoochst at all, but in Wiesbaden-Biebrich with a foreign firm and he stayed away from work there solely in order to be able to consult the doctor in Hoochst. He most certainly would not have done this, had he been afraid of the treatment in Hoochst.

Finally in January 1945 he came because of warts and for the sake of this slight beauty blemish he was handed over by a German doctor to a skin specialist for electrical treatment. Even in March 1945, when there really were other things to worry about he had himself treated again for three warts.

This conduct on the part of the affiant himself refutes his argument clearly and unmistakably. I do not think that any reliance should be placed in a witness who states such manifest untruths.

### III Auschwitz.

The Prosecution believes that it can also connect Jaehne with the charges brought in connection with Auschwitz and the gassing of human beings. The Prosecution has produced very little concrete evidence of this. I can therefore restrict

myself in this brief plea to a few statements. Jaehne was in Auschwitz 3 times for a few brief hours on the occasion of Toko meetings. He has given the Tribunal precise information as to the purpose and duration of each visit. On the first two occasions he did not see the prisoners at all. The first visit, in fact, took place at a time when there were no prisoners in Auschwitz yet. On the second visit he entered only the administrative building of the factory. Jaehne was in Auschwitz for the third time in April 1944 on the occasion of a Toko meeting, and about half a day was spent in inspecting the works with their modern architecture. Herr Jaehne gave exact information on what he saw on this visit. His impressions were restricted to technical matters. He stated with conviction that nothing struck him especially about the few prisoners whom he caught sight of. On this point his description is identical with that of the witness Diodenkopf, who also took part in this inspection and made detailed statements before the Tribunal.

Jaehne had no sort of responsibility as far as the technical or the organizational side of the Auschwitz works was concerned. The Prosecution believes that it can assume knowledge and responsibility on Jaehne's part on the basis of his



having conscientiously stated that he once heard rumors about gassing, JAEHNE himself, however, explained clearly that it was a question merely of rumors and that he had placed no faith in them. The state of Germany at the time was such that countless rumors were in circulation. These were not, however, believed by people of normal intelligence, but were regarded as enemy propaganda. The actual occurrences were shrouded in such an elaborate system of secrecy and camouflage that they did not reach the ears of the outer world.

J'EHNE must also be believed when he states that his son reassured him on the subject to the effect that only rumors and not concrete facts were concerned. If the Prosecution counters this by mentioning the affidavit of his son Norbert J'EHNE, it can be demonstrated from this very affidavit that Norbert J'EHNE states that he did not hear of the gasings until November 1944. His father's last visit, however, had taken place in April 1944. By November 1944 the events of the war had already advanced to such an extent that Auschwitz was about to be evacuated and JAEHNE was no longer in touch with his son.

Conclusion.

Mr. President, Your Honors,

The Prosecution itself brought very little evidence against the defendant J'EHNE on the subjects with which we are concerned. For the rest, they considered it possible to represent him as a criminal and conspirator merely on the grounds of his position as Vorstand member of the I.G. I do not think that this is sufficient to condemn a man who, like J'EHNE, can look back on a blameless life. That imposes certain limitations on the position of a German defense counsel with an American Military Tribunal. On the other hand, the position of the Tribunal also seems to me to be difficult. There are so many opportunities for misunderstandings, from differences in language to the difficulties encountered by a member of a democratic state in understanding events in a totalitarian state. Germany's transformation into a totalitarian State did not take place in a manner which could be

clearly recognized by someone living in that State, but imperceptibly and by degrees. All of his life, JAEHNE was a technical man. This technician did no more than thousands and thousands of technicians and industrialists in all other belligerent countries. He stayed at his post and did his duty. He relied on the politicians of his nation to fill their posts as honestly as he. In his own circle, he acted with decency, propriety and good sense. As anyone who understands German conditions will confirm, such a man was left in his post by the Party only because as a result of the war they could not dispense with his expert knowledge. Otherwise JAEHNE would long ago have to relinquish his post to someone more reliable from the point of the totalitarian system, and would have been the victim of a purpose.

The proofs of JAEHNE's honest and untroubled attitude to the totalitarian system are too numerous to be overlooked. The consequent stand taken by the Hoechst works management of the foreign labor question has also been proved by a great deal of evidence. The same applies to participation in preparations for war, or to plunder or spoilation. The ruling spirit in a factory is the spirit of the factory management. I think that I have demonstrated that the spirit prevailing in the Hoechst dyestuffs factory was a good one. It is therefore my duty, in accordance with my conviction, to appeal for the acquittal and complete rehabilitation of the defendant JAEHNE.

THE PRESIDENT: Dr. Nath for Dr. Hans Kuehne.

DR. NATH: (Counsel for the Defendant, Dr. Hans Kuehne):

Mr. President, Your Honors,

On the right bank of the Rhine in the close vicinity of the venerable and once so happy city of Cologne, rise the extensive plants of the Leverkusen Works of Farbenfabriken Bayer & Co., which belonged to I.G. Farbenindustrie Aktiengesellschaft. I have taken it upon myself to describe to your Honors the person and weight of responsibility of the man, who until the middle of 1943 held the reins of the management of these works, and against whom the Prosecution

deems fit to bring charges. Here in Leverkusen is situated one of the most important dyestuffs factories which later on made known the name of "I.G. Farbenindustrie". The history of these works is to a great extent also the history of I.G. Farbenindustrie, and the men who worked there have made a decided contribution to the development of what was to become one of the greatest chemical enterprises in the world. Therefore, it seems to me necessary for the purpose of arriving at a judgment, to give to Your Honors in a few words a survey of the creation and growth of the Leverkusen Works. You should not overlook the fact that in Germany there are traditional sources of knowledge which show how close was the attachment of the entrepreneur to his factory, and which to a great extent determine the views and actions of all factory members, especially of its leading persons.

Eighty-five years ago, on 1 August 1863, the foundation was laid for the work to be carried out by many thousands of people in the plants at Muppertal-Elberfeld, Leverkusen, and Dornum. On this day Friedrich Bayer and Friedrich Tassett founded the firm Bayer & Co., in Barmen. For the first few weeks only one workman was needed; then three more were engaged. "Three at a time", as an old veteran worker from that time admiringly put it. The firm produced aniline dyes, chiefly Fuchsine. The many Muppertal dyers gladly bought these new dyes from their enterprising fellow-countrymen, provided they were cheaper than the French and English ones. The first aniline dyes were not much good. It was considerably easier for the English and French manufacturers. England had the largest gas and acid plants in the world, which supplied unlimited quantities of tar, acids, and alkalis at cheap prices to the home dyestuff factories. France was in a similar position. In Germany only a few poor attempts had been made. Within a few years, however, the German dyestuff factories were to succeed in outstripping the French dyestuff production and in gaining a considerable advantage over the English products by the invention of alizarine. A German scientist had discovered a process



by which alizarine, the coloring substance of a plant, could be derived from hard-coal tar. In the science of organic chemistry the Germans had gained the ascendancy. Professor Liebig at that time was lecturing in Munich, Woebler in Goettingen, Hofmann in Berlin and Kekule in Bonn. The remarkable thing was that these men made the young chemists familiar with the ideas and methods of research at the university laboratories. At that time no such thing was known abroad. The brilliant rise of the German Chemical Industry is to be attributed to the alliance between technique and science. Within a few months the chemists had improved the method for producing alizarine in German factories to such an extent that Germany was able to produce practically double the amount of dyestuffs as compared with England and France together.

It was alizarine which gave the impetus to Bayer & Co's start. An alizarine factory was set up in Elberfeld next to the Fuchsine factory. But the founders of the firm did not live to see the brighter future. Both died when only 55 years old. After their deaths the firm was converted in 1861 into a joint stock company (Aktiengesellschaft), the Farbenfabriken vormals Friedrich Bayer & Co. At the head of the Aufsichtsrat (Supervisory Board) was Carl Rumpff, a son-in-law of Friedrich Bayer, and the sons of the founder formed the Vorstand (Executive Board). They were energetic young men. The eldest was Carl Rumpff, who was 42. But keen competition made the further development of the enterprise difficult; it could not keep pace with the other big German works. It was Carl Rumpff who was responsible for the closer contact in the dyestuff factories between technique and science. He engaged three young chemists and sent them at his own expense to different German technical colleges. One of these three was Carl Duisberg. The name of this man has been repeatedly mentioned in the course of this trial. In 1884, on his 23rd birthday, he took up his activities in the Elberfeld dyestuff factories. Within 14 months of reported no less than five inventions. Two of them died

all compition, viz, "Benzopurpurine" and "Benzonserine". Those belonged to the class of the azo dyestuffs, which make it possible to dye cotton without the previous use of mordants. The plants, workshops and offices now expanded. The firm Friedrich Bayer rapidly caught up with others, But this mass of work had to be directed into the right channels and properly organized. It is in this field perhaps that Carl Duisberg achieved most. He was a born organizer. There is no branch of the dyestuffs factories, with its manifold ramifications and world-wide activity, which socher or later was not conceived, and shaped by him wh ich did not bear the stamp of his spirit. At Duisberg's suggestion work was started in the field of synthetic medicaments which had just been opened up. The very first product of the dyestuffs factories viz. Phenacetine, was a complete success. When the dyestuffs factories celebrated the 25th anniversary of their foundation, they were employing about 1000 workers and mechanics. The next decades saw an amazing expansion. The sales grew, and production was enriched by a great number of dyes and medicaments. Beutlinger, a brother-in-law of Bayer junior, started on his great voyage of publicity which lead him to the Far East and to North America. The effect of his activity soon became manifest in the considerable increase of the export business. Bayer's name became well known in the field of medicaments. Before the close of the century Phenacetine was followed by the soporifics "Sulphonal" and "Trianel", the tonic "Serratose", and "Aspirin". Elberfeld became too small for these manifold activities. In the early nineties the firm acquired a vast terrain near a small peasants' village not far from Cologne. The factories of Aktiengesellschaft Bayer & Co. were moved to Leverkusen. They were set up according to the well-thought out plan of Carl Duisberg, and even to-day their lay-out is regarded as a patten of suitability and arrangement. On this wide stretch of land, which provided space for this unprecedented development, spread over nearly 60 years, there

was created a proud center of work and of life in which all members were closely linked with the factory. The factory management has always adopted the principle, apart from the pursuance of purely economic interests, of looking after the welfare of its workers and employees, and performing thus social and ethical duties of the most varied nature. This principal was adopted especially by Leverkusen. As the factory was erected in an area which until then was only thinly populated, the most important problem was to provide good and cheap living quarters for the large numbers of workers. Today there are several settlements containing over 4000 apartments belonging to the plant, as well as extensive gardens and playgrounds.

As early as 1898 a pension fund was established. In 1908 the building of a recreation center was completed, which was the center of the social life of the workers in Leverkusen. In 1912 a large factory club-house was opened, and, in the course of time 120 well furnished recreation rooms were set up in the plant itself. These were connected with dressing rooms and bathrooms. In 1905 a maternity home was opened in Leverkusen under the supervision of a doctor. At about the same time a housekeeping school was established, in which the sons and daughters of workers were instructed in many practical subjects. The workers received medical treatment in a clinic fitted with modern equipment and Carl Duisberg had two large parks laid out for the recreation of the workers and employees. There was even a large swimming pool and tennis courts which could be used by all members of the plant.

Your Honors, I mention all this in order to show you that it was an old tradition in the I.G., especially in the Leverkusen Works, to care for the members of the working staff. I beg you to bear in mind this fact, when in the course of my further



statements in answer to count III, I shall have to describe the lodging and the treatment of the foreign workers employed in Leverkusen during the last war. I could still name a great number of other social institutions, such as convalescent homes, club-buildings, and numerous funds, which were all for the welfare of the working staff. What is more important, however, is that I should convey to you an idea of the kind of spirit that ruled in this plant at the time when my client Dr. Hans Kuehne was appointed the manager of the Leverkusen plant in January 1933.

What kind of man is this Dr. Hans Kuehne, who entered the services of the Farbenfabriken, formerly Friedrich Bayer & Co., on 16 February 1916 - 32 years ago - as a chemist?

While still a student Dr. Kuehne had made an invention which was the means of his obtaining a good position as assistant to the plant manager in the Chemische Fabrik Marionhuetten am Harz in Thuringia. This young man of 26, who was born in Magdeburg, in his first job showed that he was in sympathy with the workers. When later on he took the part of a worker, who had been active in the Social Democratic Party, and when Kuehne himself attended social democratic meetings, - in 1916 for a man in his position to do such a thing was generally considered outrageous - differences arose between Kuehne and his chief, which resulted in his having to leave. After holding several posts in chemical firms, some of them executive positions, he found himself faced with the interesting task, which had been set him in Leverkusen, of putting into practice a process which had been developed by Prof. W.J. Mueller in the laboratory, by which sulphuric acid and cement could be obtained from gypsum and clay. After two years of hard work he succeeded in solving the problem and in establishing the process as the Mueller-Kuehne Gypsum -

Sulphuric Acid Process. To exploit this process a large plant was built by the ICI in Billingham, England, another was erected in St. Chamas for the government powder plants in Southern France. Dr. Hans Kuehne presented the rare combination of a highly gifted chemist and a man with a keen sense of social duty towards the workers, which predestined him to become the manager of the plant. Leverkusen, which it was his task to manage, is one of the world's most diversified chemical plants. There are more than 200 separate factories, in which, apart from dyestuffs, a large range of products of anorganic chemistry are produced. You have there a factory for photographic paper, plants for making synthetics, pharmaceutical products, a research laboratory for developing Buna and various other scientific laboratories and technical departments connected with it. My client, when in the witness stand, compared his position with that of the head doctor of a large hospital, thus showing clearly that while it would have been impossible for him to have an expert's knowledge and to be responsible for the details, his tasks did embrace the management of the entire plant, and for this he bore the full responsibility.

Count I

A few weeks after my client had taken over the management of the plant, Hitler became Chancellor of the Reich. Thus commenced a period destined to set difficult tasks for the manager of such a plant. The Prosecution has attempted to produce evidence in these proceedings that the indicted members of the Vorstand of the I.G., among them Dr. Kuehne, had collaborated with National Socialism, being fully aware and conscious of the fact that Hitler would attack other nations in a war of aggression. In its statements, the Prosecution goes so far as to claim that the perception of the

aggressive intentions of National Socialism would have been possible as early as the beginning of the assumption of power, and claims the fact of membership in the National Socialist Party to be circumstantial evidence for the planning and preparation of aggressive warfare. I will confine myself to pointing out that the Prosecution's argument is diametrically opposed to the opinion of the International Military Tribunal, and I do not think I need repeat the legal arguments which my colleagues have already submitted in detail to the Tribunal. What I do especially refute here, however, is the assertion that - as the Prosecution once expressed it - every sensible man in Germany did know, or must have known that National Socialism was planning to engage in aggressive warfare. In support of this argument, we were shown a picture, fashioned of small stones like a mosaic. Here everything is depicted, commencing with the Party Program, then taking in Hitler's book "Mein Kampf" and ending with rearmament and the Four Year Plan. The whole is glued together with assumptions and unproven statements. Confronted with this, the Defense was obliged to define its attitude to such a series of assertions, which, having regard to the clear reasoning behind the decision of the International Military Tribunal, must be regarded as legally irrelevant. But we should fail in our duty as defense counsels, if, in the interest of historical truth, we did not raise objections to statements which culminate in the assertion of the Prosecution, that everybody, which means the defendants too, must have been able to foresee, as early as during the first years of National Socialism, the subsequent developments, especially as the Prosecution has omitted to determine exactly when this alleged knowledge of Hitler's plans for aggression might have been obtained.



Your Honors, the political developments which led in 1933 to the assumption of power by the National Socialists and the effects during the following years did not remain hidden to the world. There are a large number of statements by leading foreign politicians, who voiced their opinions on Hitler and National Socialism, and whom you, Your Honors, cannot ignore and whom I shall quote in order to refresh your memory. When we raise the question of guilt surrounding the development of National Socialism, with which at first it was thought possible to inculcate the entire German people, then we propose to distribute this - I mean here "guilt in the widest sense" - in a just manner. We have to distinguish between this guilt and the guilt which can be charged to an individual and which may be prosecuted under criminal law. Already after the first election success of 14 September 1930, which raised the number of Hitler's members in the Reichstag from 12 to 107, a race to obtain his favor started abroad. It was the English Press Lord, Viscount Rothermere, who wrote an article for the "Voolkischer Beobachter" of 25 September 1930, with the headline: "Hitler's Victory. New-Birth of the German Nation. A New Epoch in World Politics." I quote from this same article:

"For the welfare of Western civilization it would be best if in Germany a government would assume power, a government permeated by the same sound principles, as those adopted by Mussolini to renew Italy during the last 8 years."

End of quotation. In the United States the Hitler movement began to arouse interest. I would like to remind you of the journalist Mr. Knickerbocker, who became well known in Germany and who interviewed Hitler. I would like to mention Mr. Hearst, too, who without doubt supported National Socialism in his papers. When the famous statesman Lloyd George returned in September, 1936, from a visit to Germany, where he had spoken

to Hitler, he stated his opinion as follows. I quote:

"Germany does not want a war, but fears an attack on the part of Russia and regards the Franco-Russian Pact for Mutual Assistance with some suspicion. I have never seen a people happier than the German people. Hitler is the greatest of the many great men I have met in my life.... Hitler is the George Washington of Germany, the man who has won for his country independence from all its oppressors."

End of quotation. Even Mr. Churchill was deceived for a time regarding the nature of the NSDAP and the aims of Hitler, when in 1935 he wrote concerning Hitler, I quote:

"The story of Hitler's struggle cannot be read without admiration for the courage, the endurance and the vital strength which enabled him to win the struggle.... It is impossible to pass a correct judgment on a public figure that has acquired so enormous a stature as Adolf Hitler, unless his life work lies before us in the round. Although later political acts cannot give occasion to overlook wrong deeds, history offers countless examples of men, who, although they were enabled to seize power through the use of apparently hard and ruthless measures, yet for that reason, when their life as a whole is revealed, must be regarded as great figures, whose work has enriched the history of mankind. So may it probably be with Adolf Hitler; but it is not possible for us to have at this moment a definite opinion."

End of quotation. And I close this selection of prominent voices from abroad not with that of a politician, but of a great and famous writer, namely, Bernard Shaw, who in a speech, according to "Pearson's Weekly" (London, 20 January 1934) declared, I quote:

"Hitler is an extraordinary personality, a very capable person...." 1)

End of quotation. Your Honors, these few quotations show us the views held by prominent personalities abroad concerning Hitler and his National Socialism of the first years, and they

-----

- 1) The above quotations are taken from an article entitled "Fair Distribution of Guilt" ("Gerechte Schuldverteilung") which appeared on 1 January 1943 in the periodical "People and Time" ("Volk und Zeit").

further show that political developments are difficult to foresee and can give rise to considerable error. The examples finally make clear how false the thesis of the Prosecution already is in its starting point.

Now, Dr. Kuehne was neither a National Socialist, nor had he made a bond with Hitler, neither did he work together with others, in order to prepare with them or alone, wars of aggression. The fact that the manager of so large a works could not for ever continue to refuse membership in the NSDAP, which had been pressed on him by the Party in 1933 and 1939, is clear to everyone who knows what conditions were, and has been proved to the Tribunal. One case which I should like to mention here seems to me to be characteristic and clearly shows the relation of my client to the Party. When a Jewish chemist, Dr. Rosenthal, was arrested by the Gestapo, he immediately intervened on his behalf. It was later established that Dr. Kuehne's correspondence in this matter, which he addressed to numerous official agencies, with the object of obtaining the release of Dr. Rosenthal, was watched by the Secret State Police, the Gestapo. Dr. Kuehne repeatedly emphasized that his Jewish chemists and employees were in every way as good co-workers as all the others and that he would always intervene to see that their rights were protected. Also on the same level, is the fact that racially persecuted persons were reinstalled by my client in the works, protected by him and offered a living, and this in times when it was involved with a personal risk to himself.

In order to give foundation to their assertion that Dr. Kuehne had knowledge of Hitler's intentions to wage aggressive war and had taken part in the planning and preparation for it, the Prosecution thinks it can point to a correspondence with the Vermittlungstelle W, according to which a so-called



"Planspiel" (map exercise) had taken place in Leverkusen. The Prosecution accompanies the document it submits with the observation that it had to do with "tactical exercises", with "war games". Let us assume that this remark of the Prosecution is due to the fact that the translation of the German word, "Planspiel" into English offers certain difficulties and is liable to misunderstanding. As the heading of the so-called "Plan" shows, this has to do with an economic planning which was carried out in accordance with the order of state authorities. The meaning was to establish how the Leverkusen Works, which of course were in the vicinity of the western Reich frontier, could get along in the production, in case, in the event of war, they should be damaged by enemy bombs. It was a question, therefore, of purely defensive air raid protection exercises which, both before and after 1937, were carried out all over Germany. No proof has been submitted in any way that this measure had to do with cooperation in the preparation for a war of aggression. In addition to this, my client quite openly referred to this single performance "Planspiel" as "play-acting" ("Theaterspiel"). This attitude expressed his conception of the matter. Dr. Kuehne had always been, as we have evidenced by affidavits, a pacifist and anti-militarist, and it is in this connection significant that, under the management of my client, the Leverkusen Works were not declared as an "R-Betrieb", i.e. as an armaments plant.

Dr. NATH: Your Honors, perhaps the Tribunal would like to adjourn now.

THE PRESIDENT: The Tribunal will recess until 9 o'clock tomorrow morning.

(Tribunal in recess until 0900 hours, 8 June 1948)

Official transcript to American Military Tribunal VI in the matter of the United States of America against Carl Krauch, et al, defendants, sitting at Nurnberg, Germany, on 8 June 1948, 0900, Justice Shake presiding.

THE MARSHAL: The Honorable, the Judges of Military Tribunal VI.

Military Tribunal VI is now in session. God save the United States of America and this Honorable Tribunal. There will be order in the Court.

THE PRESIDENT: Will you make your report, Mr. Marshal?

THE MARSHAL: May it please Your Honors, all the defendants are in the Courtroom.

THE PRESIDENT: Counsel for the defense may continue with their arguments. The argument on behalf of Dr. Kuehne has been completed.

DR. HATH: (Counsel for defendant Kuehne): Mr. President, Your Honors, I shall continue in the discussion of Count I of the indictment.

The Prosecution sees in the rearmament of Germany the preparation aggressive war. The fact of the armament is not, in the opinion of the IIT judgment, a punishable act. There were no weapons of attack produced in Leverkusen. According to these of the Prosecution, it would have had to be proved:

1. That my client recognized in the re-introduction of conscription and armament, announced in 1935, measures having as object the waging of aggressive war and

2. That in this knowledge he contributed by acts of his to the support of an existing plan of aggression.

My colleague, Attorney Dr. Bootchor, has submitted to Your Honors two document books concerning the constantly repeated peace protestations of National Socialism. These documents and the statements of various witnesses whom we have heard here prove

that the German people did not consider possible a war of aggression by Hitler. All the greater was the shock and the dejection of the people when Hitler broke all his assurances and committed the most monstrous betrayal of the German people with the beginning of the war against Poland. The Prosecution has not submitted the slightest conclusive evidence that my client had a better knowledge of Hitler's real intentions and my client had a better knowledge of Hitler's real intentions and was less, or not at all, surprised by the outbreak of war.

We are constantly meeting with suppositions, hypotheses and conclusions on the part of the Prosecution, precisely on this first count of the Indictment. The edifice of justice cannot be raised upon such theories. If proof is thus lacking on the part of the Prosecution, I, however, on the contrary, am in the position to show how far removed the works management in Leverkusen, especially Dr. Kuchne, was from the idea that Hitler would wage aggressive war. Here are some examples: At the end of August 1939, chemists and technicians of the Leverkusen works were in Billingham in England for the purpose of putting into operation a sulphuric acid plant built by Leverkusen for the Imperial Chemical Industries. In France, at the same time, a sulphuric acid plant was being installed by employees of the Leverkusen Works in a French Government explosives factory. If anyone had had even the least idea that Hitler contemplated a war of aggression, German chemists would hardly have been supporting French explosives factories with such plants. So much for the warning of the potential power of foreign countries, as far as this charge has been directed against my client. My client's own son, five days before the outbreak of war with Poland, on 25th August 1939, wanted to sail with the S.S. Pretoria to South Africa, where he was to take up a post. He already had his luggage on board. When the war with Poland had broken out, it was Dr. Hans Kuchne who



voiced to his co-workers his deep dejection. Further, Dr. Kuehne took part in any conspiracy to wage a war of aggression, for the simple reason that no such "conspiracy" existed among the defendants. My colleagues have made the necessary legal statements in this respect.

It only remains for me to point out briefly that my client, so far as he received information of the acquisitions by the I.G. in other countries, of, as in Austria, took part as technical advisor in the acquisition of the shares of the Skoda Werke Wetzlar and the acquisition of the Aussig-Falkenau works in the Sudetenland, had no knowledge which could have led him to conclude the existence of planning or preparation for aggressive war.

COUNT II of the Indictment

In other acquisitions or participations by the I.G., which extended to firms situated in the occupied territories, my client took no part, and the Prosecution has brought no charge against him in this respect. Dr. Kuehne has indicated that even to-day he is still convinced that, in the acquisitions by the I.G., of which he learned, as a member of the Vorstand, on the occasions of the few conferences that the general Vorstand, on the occasions of the few conferences that the general Vorstand held during the year, the usages customary in private industry were maintained and that no pressure was exercised.

The distribution of tasks between the individual members of the Vorstand has been repeatedly referred to during this trial, in connection with the question of the collective responsibility of the Vorstand. It must be agreed that my client is right, when he points out that he had more than enough to occupy him with the tasks involved in the management of his works in Leverkusen. Anything that happened outside of his province and to which there was no apparent reason for objection, could not in justice be held to oblige my client to con-

cern himself with what belonged to the spheres of work of other Vorstand members. He could surely rely on his colleagues, who had nearly all for decades properly conducted their own departments, to carry out also the acquisitions described in this trial under Count II of the Indictment, in a non-culpable fashion. As far as concerns the question of the responsibility of the Vorstand, I can point to the fundamental statements of my fellow Defense Counsel on this point. I will here only establish the fact that the Prosecution have not brought forward a single case against Dr. Kuehne that proved a knowledge on the part of my client that would form a basis for criminal procedure. I think I may refer here to the principles announced by the Military Tribunal No. IV in its judgment in the case against Friedrich Flick and others:

1. Nobody can be convicted unless his personal guilt is proved.
2. The evidence must be sufficient to enable the Court to be fully convinced of the guilt.
3. The onus of proof rests entirely on the Prosecution.
4. Whenever the reliable evidence permits of two reasonable conclusions, that of guilt and that of innocence, the second possibility is to be chosen.

I come now to

Count III of the Indictment:

Dr. Hans Kuehne was manager of the Leverkusen Works. He, too, is accused of having employed slave workers, who were allegedly improperly accommodated and mistreated. First of all, I will dispute with the Prosecution that the employment alone of workers who have come to Germany against their will, is of itself culpable under the Hague Regulations of Land Warfare and under Law No. 10 of the Control Council. May I state in advance that the judgment of the American Military Tribunal No. IV against Flick has established, I quote:

"that the slave labor program had its origin in Reich governmental circles and was a governmental program."

End of quotation.

In the evidence and in the documents submitted by the Defense it was shown that the Leverkusen plant in some instances recruited workers in the occupied territories, and on an absolutely voluntary basis. Everyone of these workers came voluntarily and without any coercion to Leverkusen. The employment of voluntarily workers is punishable neither according to the Hague Regulations on Land Warfare, nor according to the Control Council Law No. 10, and does not constitute a participation in the slave workers program of the Government.

The problem to be discussed here and now submitted to this Tribunal is whether the fact that foreign slave workers were employed in German Industry, is punishable according to international law, i.e. in the particular case to be decided here, where the State issued orders and decrees for the employment of these foreign slave workers and enforced them by punishments. In the Flick Judgment the Military Tribunal stated, I quote:

"Workers were allocated to the plants needing labor through the governmental labor offices.



cern himself with what belonged to the spheres of work of other Vorstand members. He could surely rely on his colleagues, who had nearly all for decades properly conducted their own departments, to carry out also the acquisitions described in this trial under Count II of the Indictment, in a non-culpable fashion. As far as concerns the question of the responsibility of the Vorstand, I can point to the fundamental statements of my fellow Defense Counsel on this point. I will here only establish the fact that the Prosecution have not brought forward a single case against Dr. Kuehne that proved a knowledge on the part of my client that would form a basis for criminal procedure. I think I may refer here to the principles announced by the Military Tribunal No. IV in its judgment in the case against Friedrich Flick and others:

1. Nobody can be convicted unless his personal guilt is proved.
2. The evidence must be sufficient to enable the Court to be fully convinced of the guilt.
3. The onus of proof rests entirely on the Prosecution.
4. Whenever the reliable evidence permits of two reasonable conclusions, that of guilt and that of innocence, the second possibility is to be chosen.

I come now to

Count III of the Indictment:

Dr. Hans Kuehne was manager of the Leverkusen Works. He, too, is accused of having employed slave workers, who were allegedly improperly accommodated and mistreated. First of all, I will dispute with the Prosecution that the employment alone of workers who have come to Germany against their will, is of itself culpable under the Hague Regulations of Land Warfare and under Law No. 10 of the Control Council. May I state in advance that the judgment of the American Military Tribunal No. IV against Flick has established, I quote:

"No plant management could effectively object to such allocation. Quotas for production were set for industry by the Reich authorities. Without labor, quotas could not be filled. Penalties were provided for those who failed to meet such quotas."

End of quotation. In the case of the I.G. and of my client I can take as basis the statement of Tribunal IV, as the facts are the same. We have here the case of international laws, namely, the Hague Regulations on Land Warfare, being in contradiction to the internal laws of a State.

The conception, according to which only States as such have rights and duties as laid down in international laws, and which has so far been upheld in international law, was denied in the DKE judgment, and officials and members of the Government who carried out the Government program for the recruiting of foreign workers, which is here under discussion, were sentenced. But in our case the persons before this Tribunal are industrialist i.e. private persons, who are accused of having violated international law, because they carried out the orders of their Government which issued them in contradiction to international law.

You have therefore first to examine, your Honors, whether international law can take precedence over the individual internal law of a State according to the legal situation at the time and also today; furthermore, whether, by assuming international law to transcend the circle of State officials, bound by law to observe international laws, every individual citizen must regard international law as a law which takes precedence, over the internal law of a State. I would like to point out that neither at the time when the defendants were carrying on their activities, nor today is there a general rule, according to which agreements based on international law or international unwritten law unreservedly and in every case come before the individual State law. In the United States Constitution of 1787 the transcendence of original American State law over international law, in particular, over agreements based on international law, was recognized in the following words. After it was stated in Article VI, 2, of the Constitution, I quote:

"all treaties made or which shall be made under the

authority of the U.S. shall be the supreme Law of the Land and the judges in every State shall be bound thereby."

end of quotation, the important restriction was added in the Constitution,

I quote:

"Anything in the Constitution or Laws of any State to the contrary notwithstanding."

End of quotation. According to this, the Constitution or a law of any federal state may create a State Law which is in contradiction to international law, and which transcends international law. Furthermore, I refer to the decision of the Supreme Court of the U.S.A. in the case against Robertson, 124 US (1888) 190. I also refer to the British practice as set out by Picotot in "The relations of international Law to the Law of England and of the United States" on page 125. The same conception is held in French law, according to which an international agreement is a legal source of equal value to the French law. According to the established French practice, a subsequent internal French law can change or cancel an international law already in existence, in so far as it is a question of applying it internally. It must therefore be regarded as a definite rule still valid today that if there is a contradiction between the international and the State law, the judge must apply the State law created later. This legal concept did not change after Hitler became the supreme authority for issuing laws in Germany in 1933. It must be admitted, however, that conflicts between international and State law increased in frequency. Limits set by German or international law did not exist for the Dictator Hitler.

It seems to us that only those who know nothing about the internal situation under Hitler can discuss whether international law or national law had priority in the National Socialist State. Who could uphold that his orders were less valid than Reichstag resolutions? They were supreme decisions. A whole world united later to overthrow his regime. One makes this struggle devoid of all meaning and foundation if one now claims that every German citizen had the right and the duty to say nothing of the



ability, to examine whether the orders by the absolute ruler were legal, whether they were in contradiction to international law, and then to comply with the orders or refute them accordingly.

The judge, therefore, who bases his judgment on international law cannot be permitted to disregard the general practice of the States which place the law of the land higher than international law, and to give priority to the standards of international law which are opposed to the provisions of the law of the land concerned.

The second question which I would put to you for your consideration is that of whether the standards of international law in their present form are directed against every individual citizen, thus rendering each one liable to punishment for failure to adhere to these standards, or whether the members of the Government or those officials of the State whose responsibility it is to ensure that the provisions of international law are observed within the framework of the laws of the land, can alone be held responsible.

I am of the opinion that the judgment pronounced by Military Tribunal No. IV on Flick has left the man problem out of its considerations altogether. Tribunal No. IV rightly recognizes that the Works Managers appearing as defendants found themselves faced with an emergency situation. This, however, constitutes only a partial answer to the question. I shall return to the subject of the emergency later. Tribunal No. IV does not consider justified a distinction between those people who, as officials of the State, are under an obligation to enforce the observance of international law, and private individuals, and explains, I quote:

"International law, as such, binds every citizen just as does ordinary state law.

Acts adjudged criminal when done by an officer of the government are criminal also when done by a private individual."

End of quotation. In my opinion, this sentence constitutes an evasion on the part of Tribunal No. IV of the problem under discussion. The

question is precisely whether, as a private person, the individual citizen, who is ordered by the law of his own land to act contrary to the provisions of international law, owes allegiance to his own government or whether, disobeying the law of his own land, he should obey the dictates of international law. The untenable conclusion to be drawn from the sentence cited from the Flick judgment is that, in either case, regardless of his decision, the private individual would of necessity render himself reliable of punishment.

In his statement for the Prosecution on 17 January 1946, Francois de Manthon, Chief Prosecutor for France in the IMT proceedings, stated the following, I quote:

"It is obvious that, in an organized, modern State, responsibility is limited to those who act directly for the State, they alone being in a position to estimate the lawfulness of the orders given. They alone can be prosecuted and they must be prosecuted."

End of quotation. We believe the view of Justice as expressed by the Chief Prosecutor for France to be the only tenable one and the only one which does full justice to the present day conception of the law of the individual State, for this view does not oppose the theory of the sovereignty of the State, which is the controlling factor in the government of all countries.

There are many examples in the literature of international law to illustrate the fact that the sovereignty of the individual law to illustrate the fact that the sovereignty of the individual State is a concept which has lost nothing of its importance today, and I consider that I need do nothing more than draw attention to the United Nation's Charter which, on principle, leaves the sovereignty of the individual State untouched. The recognition of the right of veto is the direct and logical outcome of this theory of sovereignty. The note dated 25 June 1928, written by Secretary of State Kellogg to the nations negotiating on the Briand-Kellogg-Pact, also shows that the full sovereignty of the State will continue to be recognized in every State, when that State alone is called upon, I quote:

"to decide whether the circumstances are such that it is forced to go to war in self-defense."

End of quotation. As long as there is no World State to nullify or restrict the sovereignty of the individual States, the internal order of the individual State requires the recognition of the sovereignty of that State, particularly in the sphere of legislation. In the last analysis this sovereignty is the element on which international law is founded today.

I do not contest the fact that there are regulations within international law which affect the individual person, e.g., the provisions governing the treatment of the wounded and of prisoners of war, for the non-observance of which individual persons can be held responsible far from it. In the theory of international law, however, such regulations are generally looked upon as exceptions, which can be contrasted with the large number of regulations in international law which apply only to the State, the Government, the "belligerent power."

One can recognize, however, in addition, that the States are not more fictitious legal entities, nor were they ever conceived as such, but that the State is governed and represented by men. The only factor which can be considered essential to the State is the organization, which I quote Professor Nawiaski -

"prescribes for certain persons a certain line of conduct which will influence the organization, that is this State, or which can be attributed to the State. It is in the respect that the provisions of international law - and this is their peculiarity - apply to individual persons, the persons thus affected being those directly appointed by the organization, i.e., by the State to hold office. These are the persons upon whom obligations fall within the scope of international law."

End of quotation. In my opinion, it is this view alone which can lead to a just and true impression and judgment of the present situation in so far as it involves the precepts of international law. This view abandons the former theory, in accordance with which only abstract legal entities, the States, could be held responsible for infringements of international law. It extends criminal liability to include those individual persons who, as government officials, act with the full authority of the State, and whose task it is to observe the provisions of international law. It avoids the conflict of loyalties for the individual citizen and leaves to



the State the degree of sovereignty which present conditions render necessary.

None of the persons appearing as defendants here was a Government official of this category, officially responsible for the observance of the provisions of international law and for the preservation of the balance between international law and the law of the land. These legal observations of themselves exclude the possibility of criminal liability in this matter, as the defendants are not the people against whom the above-mentioned provisions of international law are directed.

Having made the above statements, I should now like to examine the problem from another point of view. If the defendants concerned did in fact, employ foreign workers, and knew that the workers had been brought to Germany by force. The Court of Law which threatens them with punishment must be in a position to tell them in what way the law provided for them to avoid employing such persons. The Tribunal sitting in Case No. 2 against former Generalfeldmarschall Milch included in the Substantiation of the verdict the following sentence on the procurement and use of workers, which is particularly relevant in the present case:

"That liability to punishment can only be assumed if Milch was personally involved in the procurement of foreign workers, or if, knowing full well the course of events, he failed to take any action to prevent it, despite the fact that he was in a position to do so."

We are therefore faced, in legal terminology, with the problem of the crimes of omission. I may assume that this concept, as it figures in German penal law, is known to the Court. If we are to apply this theory of the crime of omission to international law, we must first examine the question of whether the offender was under any obligation to take action. It would therefore be necessary to prove that it was a duty of the private individual, in this case, of my client, laid down in international law, to intervene and thus to avert the result which is the subject of the charge, namely the employment of foreign workers on a compulsory basis. In both British and American law, liability to punishment for a crime of omission also depends on the existence of a duty.

There is, however, in Military Law and in the Laws of Customs of War, no mention whatsoever of the "duty" of the individual citizen. In view of what has gone before, we could recognize such an obligation only in the case of a small circle of officials representing the State in this matter. The sentence quoted from the Tribunal should, however, be observed in the case of the liability to punishment of a person guilty of a crime of omission, which comes into question only "if the person considered to be under an obligation to act had full knowledge of the criminal action, and did nothing to prevent it, despite the fact that he was in a position to do so."

A further consideration is the fact that the crime of omission presupposes the existence of a causal connection between the omission and the criminal results. The Reich Court regularly accepted the existence of a causal connection in a crime of omission only, I quote:

"If it can be proved beyond all reasonable doubt, that the result which forms the subject of a charge can be prevented."

End of the quotation. It would therefore be necessary to be able to prove beyond all reasonable doubt that the National Socialist Government would have given up its so-called slave labor program, had the defendants actively opposed the same. It is not necessary to stress the point that, even if one were to accept the fact of the obligation to intervene, the defendants would never have succeeded in bringing Hitler to abandon the slave labor program during the war. My client rightly stated, in reply to my question that, in such a case the only result of such action on his part in wartime would have been immediate imprisonment as a saboteur of industry. That the defendants did not wish to expose themselves to such a consequence was their natural right. The considerations which I have discussed

here apply to Control Council Law No. 10 also. Thus the assumption of a crime of omission is excluded from our deliberations.

Now, as I have already mentioned, the Flick Judgment assumed the existence of an emergency situation, and rightly drew attention to the state of terrorism prevailing under the Third Reich, a state which affected the lives of these defendants also. In this connection, Tribunal No. IV quotes from Wharton's Criminal Law, I quote;

"The law of cases of necessity is not likely to be well furnished with precise rules; necessity creates the law, it supercodes rules, and whatever is reasonable and just in such cases is likewise legal."

End of quotation. This sentence also recognizes the concept which is known in German law as "Unzumutbarkeit", which can best be translated into English as "unexpectability". This concept of "unexpectability" is the general principle underlying all special legal provisions applying in the individual States in cases of self-defense, states of emergency, provocation and conflict of loyalties, but it is not completely exhausted by such cases. It can therefore also be used, for example, in cases in which the conditions determining a state of emergency are not fulfilled because a defendant did not know of the removal by force of foreign workers to Germany. In such a case, "Unzumutbarkeit" within the meaning of penal laws, plays its part, acting as a general basis for the exclusion of criminal liability. "A man cannot be held guilty for his action when he could not reasonably be expected to have acted otherwise. In the last analysis, to think along the lines of penal law is to think in terms of the individual person and of the individual case." The conception of the law as the definition of the ethical minimum which can be expected of the individual, leads to the conclusion that where there is no case for reproach on ethical grounds, there cannot be any question of a charge of guilt in the eyes of the law.



The concept of duty must of necessity lose its value if the average citizen is incapable, on account of the extraordinary nature of the circumstances in the case of adhering to the standards set by it. If the average citizen would have acted in precisely the same way as the person committing the offense, there is no longer any necessity to punish the offender either in an attempt to improve him or to protect society, and thus there is no longer any necessity to administer punishment. In the above, I have explained to Your Honours the concept of "unexpectedability" as it is interpreted both in the theory and in the practice of German law. "Unexpectedability", the basis for the exclusion of guilt, gives to the Judge a last opportunity to weigh the guilt of the offender, an operation in which we are concerned not only with a principle serving as an auxiliary in the administration of justice, but with a basic principle which it is the duty of every Judge to observe. The observation of this principle is not an arbitrary choice, but the expression of "critical and at the same time creative thought". This percept enables the judge who rejects stubborn legal positivism to reach a just decision.

As Chief of the Leverkusen works, the situation in which my client found himself in relation to the employment of foreign labor is clearly characterized by the fact that it was impossible for him to refuse the foreign workers allocated to him by the Labor Office if they had not come to Germany voluntarily. Here you might make use of the conception of a "state of emergency" (Notstand), or the general conception, just discussed, "unexpectedability", (Unzumuthbarkeit), if, on the grounds which I explained, you do not limit the circle of persons at whom international law is aimed in our case. One fact is certain, as has often been proved in this trial too, and that is that no works Chief during the war could dream of refusing to employ forced labor without risk to himself.

How great the Terrorism generally practised by the National

Socialist Government was, we have shown you in two instances in the evidence presented for Dr. Kuehne and here I shall mention only the case of Ricken, director of mines in Essen, who was arrested by the Gestapo because at a conference in which 5 people took part he expressed the opinion that Germany had lost the war. Herr Ricken was condemned by the People's Court, and executed.

We Counsels for the Defense, who have defended political persecutees in many trials under the Third Reich, could describe only too many similar cases to the Tribunal which would give weight to the arguments brought forward by the defendant. The fact that forced labor was employed on the orders of the State, and the allocation of foreign labor by the Labor Offices can thus not be considered criminal in accordance with either the Hague Rules of Land Warfare or Control Council Law No. 10.

As far as the treatment of foreign labor in the Leverkusen works is concerned, I can be brief. Not a single foreign worker has appeared as a witness before this Tribunal bringing a complaint against the treatment of foreign workers and prisoners of war in the Leverkusen works, nor has the Prosecution submitted an affidavit by one of those foreign workers or prisoners of war. The few statements which the Prosecution brought forward on this point were taken from the files of the works. In the closing brief I have dealt thoroughly with these documents. They are so unreliable that I need not go into them here. I should merely like to call attention to the fact that of the 26 documents presented as evidence by the Prosecution in Volume 70 of their document books, as many as 16, that is, more than half, refer to the period after 31 July 1943, to a time, in other words, when Dr. Kuehne was no longer responsible Chief of the works. These 16 documents are consequently legally irrelevant as far as my client is concerned. Nevertheless, in the interests of the prestige and integrity of the works management, Dr.

Kuehne also discussed these 16 documents in the witness stand.

If I told you, Your Honors, at the beginning of my statements, that care for the social welfare of the laborers and employees in Leverkusen was an old tradition of the works, so here too I can justly affirm that the Defense brought forward the evidence to prove how conscientiously, despite the most difficult conditions during the war, of which not the least important cause was the constant air attacks, the foreign workers were cared for.

The chemical industry has never willingly employed foreign labor. Quite apart from the fact that their accommodation and catering entailed no inconsiderable additional expense, the chemical industry in particular makes high demands on the mental suitability and versatility of the individual worker, so that foreign languages and long training present natural obstacles in the employment of foreign labor. My client, Dr. Kuehne, created a whole system of supervision which enabled him to provide the best possible care for the welfare of these foreign workers. Over the camp leader appointed by the German Labor Front, he appointed a Supreme Camp Leader, who lived in his house so that he could be in close touch with him and report to him.

When he found that one of the camp leaders of the German Labor Front had been guilty of irregular conduct, he had the man dismissed immediately. He issued orders that the plant leaders, independently of the camp management, were to concern themselves with the accommodation and catering for the foreign workers and that the interpreters were to make enquiries about the workers' wishes. Since, however, he did not trust these interpreters either, he incorporated into his system chemists and engineers proficient in languages, who were also responsible for this task.

In the individual plants there was a so-called "god-father system", by means of which a German worker was allotted to the newcomer,



with the task of familiarizing the foreign worker with his job and looking after him. A special department for accident protection constantly supervised the works buildings and issued instructions in all languages in the interest of accident prevention in the plant. The butments in which the foreign workers were accommodated and which were largely provided with steam heating, were inspected after the war by high American and British officials, who repeatedly expressed their satisfaction with the arrangements and general convenience.

Let me refer once more to the catering. The Defense has submitted to the Tribunal a chart of the calory rations for the years 1942-1944. According to this, the foreign worker received in 1943, in other words at a time when the food situation in Germany was already very difficult, 2000-2600 calories per day as the standard ration, 2100-3000 calories for overtime and night shift, 2500-3400 calories for heavy labor and 2800-4186 for the heaviest work. It was shown that over and above these amounts, the works management provided additional food for the whole staff. If this is compared with the calory ration which the German population has now been receiving for 3 years since the end of the war, and which is now at a level of about 1445 calories per day for the normal consumer in the Western Zone, with no guarantee that this can be maintained, one can then see how good the catering was for the foreign workers during the war.

The foreign workers were looked after in the same manner as far as cultural and social welfare were concerned. Sports grounds and swimming pools were laid out, sports equipment and musical instruments were provided. The Russians had a whole balalaika orchestra. Cinema and variety shows, foreign books and papers in various languages provided entertainment. Clothing and materials supplied by the works management were worked on in sewing rooms. A

crib and kindergartens were available for the small children, language courses were arranged. The auxiliary hospital for the foreigners and the dental surgery were exemplary. Such was the picture presented by the welfare organization provided for foreign workers by the plant management of the Leverkusen works during the war.

Your Honors, my client is unjustly charged with crimes as described in the indictment. He can look back with a clear conscience on the period of his work as Chief of the Leverkusen works.

Dr. Kuehne is not guilty on any count. I appeal for his acquittal.

THE PRESIDENT: The Tribunal is now ready to hear the closing argument on behalf of the defendant Lautenschlaeger.

DR. KISELMANN: I am speaking for Dr. Fribilla who is ill on behalf of the defendant Lautenschlaeger.

Mr. President, your Honors.

By a document dated 12 July 1941 both the Rector and the Senate of the Marburg Philipps University have bestowed upon Professor Dr. Med. Carl Ludwig Lautenschlaeger the title of Honorary Senator in appreciation of his scientific work in the field of chemistry and pharmacology, as well as for his generous efforts to promote the chemotherapeutical research. In the person of Professor Lautenschlaeger the University wanted to honor a man who has proved his deep understanding for all scientific branches, and who has put his scientific knowledge at the service of suffering humanity.

In its declaration submitted by me in this trial, the University of Marburg adds the following declaration to its above quoted eulogy.

"The University feels that it is its duty to refer to such facts even at the present time."

Joining the Marburg University in its anxiety, all the other

specialists-world looks to Nurnberg in order to learn whether Professor Lautenschlaeger, to whom mankind owes so much is in actual fact a war criminal who must be punished.

Professor Lautenschlaeger is now completing his sixty-first year. Fate did not endow him with material goods, and therefore he was forced in early youth to earn his living and acquire the funds necessary for his studies. All objectively thinking persons will be filled with admiration if they learn of the career of this man, which I have substantiated by submitting detailed documents.



Professor Lautenschlaeger's life was one long sequel of indefatigable assiduity in the service of science. He served and aided his fellow human beings, as has been confirmed by numerous testimonies, regardless of their political views or race. He never took an interest in politics nor was he a member of a political party. Not until the Gauleiter in the totalitarian Third Reich put him under pressure did he join the Party as a matter of form. He was informed that not unless he joined the Party, could he be confirmed in his position as Director of the Hoechst Dyestuffs Factory. After conscientious and serious deliberations on that question conjointly with his colleagues in the directorate, Professor Lautenschlaeger then proceeded to join the Party as a matter of form in order to prevent a person who might be tied to the Party, becoming the Plant Leader at Hoechst. By becoming a Party member he did not become a National Socialist, and the Party was only too well aware of this fact.

From 1938 on Professor Lautenschlaeger was in charge of the Hoechst dyestuffs works and the plant community Main-gauwerke. It was in particular the medicaments for human patients and animals out of the products that were manufactured under his personal supervision which became known all over the world. Let me mention here some of the best known of those products Tuberkuline, Salvarsane, Vitmain and Hormone Preparation Dolantin. In my statements in favor of Herr Lautenschlaeger's Deputy, Jashne, I have already dealt with all the charges raised by the Prosecution against the Hoechst factory management, as far as they concern the alleged preparations for war as well as the employment of foreign workers and prisoners of war.

In order to avoid repetition, I would like to refer fully to those statements, in my case in chief I have also proved that the total production of the Hoechst plants was used only for peaceful purposes, and that Hoechst, apart from a trifling quantity of fog acids did not have an exclusive war production program.

In his affidavit of 26 March 1947 the defendant Lautenschlaeger made several mistakes. The High Tribunal has been informed by various motions which I submitted that the defendant Lautenschlaeger was in bad health when he made his affidavits, and that other circumstances also were prevalent when he drafted them. Besides, the defendant Jaehne has rightly pointed out that the terms war essential production and exclusive armament production programs are frequently confused and that, therefore, a misunderstanding must have occurred. However, no matter which fact applies here I am certain that I have proved, based on numerous testimony, that the production of the Hoechst Plant was not a production program for armaments, and that, therefore, it was quite permissible to have foreigners and prisoners of war work in these plants. I shall yet deal in detail with this production program in my Trial Brief.

In my plea for Jaehne I have taken issue with the attitude, as initiated by the Plant management, towards the prisoners of war and foreign workers who were employed in the Hoechst Plant. Numerous facts have been introduced which prove that Professor Lautenschlaeger exerted his full influence in order that the foreign workers were treated well. He considered himself personally responsible for their well being, and he initiated and proposed many plans for the alleviation of their lot. Here, we deal with the impressive examples of a truly philanthropic and well-meaning attitude, which, in the final analysis must be ascribed to the fact that he was

a medical man apart from his work as Plant Manager.

It would indeed be unusual if a man like Professor Lautenschlaeger, who, as plant manager, was always guided by the most humanitarian principles, should have failed in his very own specialist field, that is, as a physician. Nevertheless, the prosecution claim that it has ample reasons to raise the most serious charges against Prof. Lautenschlaeger in the medical field.

It has been claimed that Professor Lautenschlaeger is co-responsible with regard to the abominable crimes which were committed in the various concentration camps under the guise of scientific research work. Our consciousness refuses to accept the thought that this scientist, so renowned in his special field, should have become a criminal at the age of 55, and this refusal to accept such fact is quite in keeping with the actual events.

The trap which was so well laid by the prosecution in order to prove Professor Lautenschlaeger's guilt is based on untenable interpretations of discussions and documents, and in particular on a random selection and compilation of documents, which have no connection to one another.

Professor Lautenschlaeger was the Director of the Works Combine Maingauwerke. The Harburg Behringwerke belonged to this Works Combine so that Professor Lautenschlaeger was the highest official of the Behring-Werke. It is in this capacity that he had to stand trial here. Yet I would like to put the question what is it for which he is accountable? Should it be the case that the Behring-Werke did wrong? With the permission of the high Tribunal I have examined Dr. Demnitz, the Director of the Behring-Werke, concerning those problems. Essentially, I can therefore only refer to his statements. Ever since 1929 Dr. Demnitz has been in charge of that plant right up to this very day without



interruption. The Behring-Werke manufactured curative serums and vaccines against infectious diseases, especially against epidemics amongst human beings and domestic animals. Dr. Demnitz is an irreproachable and straight-forward person whose scientific abilities are so outstanding that, even in the Third Reich, they could not dispense with his work although the watch list of the SD listed him with a corresponding remark.

I may assume that the High Tribunal recalls the clarity with which Dr. Demnitz refuted the accusations of the Prosecution with regard to the correspondence and deliveries by the Behring-Werke to the Buchenwald Concentration Camp, from the years 1939-1940. These deliveries were quite regular deliveries of vaccine for the protection of healthy persons during a dysentery epidemic. Not the delivery, but a failure to deliver such products would have constituted crime.

It was in 1942 when the Behring-Werke conducted experiments with vaccines, which is the action criticized by the prosecution. These experiments were initiated during a conference at the Reich Ministry of the Interior on 29 December 1941. The purpose of this conference was to discuss ways and means for boosting the production of typhus vaccines. Shortly before the conference took place, Dr. Demnitz received an invitation. Now, what was the point at issue at that time?

Comparable to an evil ghost the typhus menace approached from the East. There are many cases of typhus at the Eastern Front. The epidemic was brought into Germany by prisoners-of-war, wounded soldiers and leave personnel. From everywhere the Behring-Werke were swamped with inquiries, especially from civilian administrative offices requesting that typhus vaccine be supplied.

The so-called Weigl vaccine, which was produced from the intestines of lice, was a recognized efficient anti-typhus vaccine up till then. Furthermore, the Robert-Koch-Institute produced a typhus vaccine from chicken eggs. Since 1936, the Behring-Werke had been engaged in the typhus field, at first using laboratory animals for their experiments. In 1937 they tried to breed the bacillus on chicken eggs, and in 1939 they took over the production method of the American Cox, who also had produced a typhus vaccine from chicken eggs, but using a different production method. The Behring-Werke were invited to attend conferences at the Reich Ministry of the Interior, because it was imperative that their manufacturing plant should be incorporated in the typhus vaccine production program, as otherwise the remaining institutes in Germany would not have been capable of meeting the production quota. The Behring-Werke knew of the efficacy of the Weigl lice vaccine, whilst they had no exact knowledge concerning the quality of their own typhus vaccine. When therefore Dr. Demnitz learned at that conference that Professors Gildemeister and Dr. Krugowsky had come to an agreement concerning the execution of a comparative typhus experiment, he considered this as a splendid opportunity to have the Behring-Werke vaccine tested as well. The fact that a highly trained specialist could produce only enough vaccine for ten persons at the most by using lice, in one daily production, while he could produce enough vaccine for approximately fifteen thousand persons by using chicken eggs in the same period, shows the progress which could be achieved in fighting the epidemic provided that the chicken eggs vaccine proved itself against typhus. Therefore, it was Dr. Demnitz's duty to request that the Behring-Werke chicken egg vaccine be included in exact

scientific experiment.

The type of experiment was not discussed. The reason was that at the conference in question, only medical specialists were conferring, so that it was a matter of course for Dr. Demnitz that the experiments were to be conducted according to the accepted standards of a reasonable medical man. For example in an area declared off limits those employees of the delousing establishments could be used for the experiment by testing on one establishment the Weigl vaccine, in another one with Gildemeister Vaccine, and in a third the Behring-Werke Vaccine "Standard Type", and in a fourth establishment the Behring-Werke "Highly Potent". Conversely, in one establishment the first, third, fifth and seventh man could be given lice vaccine, and the second fourth, and sixth man egg vaccine. In this way it would have been possible to establish in as short a time as possible which one of the vaccines was the more potent, because the sudden outbreak of typhus cases in those delousing establishments never stopped. Thus it can be understood that at the conference in the Reich Ministry of the Interior, Dr. Demnitz could by no means suspect that those typhus vaccine experiments were to be conducted in an illegal manner.

In this connection it is important to find out that the harmlessness of the Behring-Werke vaccine had already been tested before then, at first in animal experiments, and then in experiments on 14 volunteers and at the Ordensburg Grossensee, for which members of a special staff had volunteered. Furthermore, Dr. Demnitz also tested the harmlessness of the vaccine upon his own person. He has stated here under oath: "It has always been my maxim that no preparation was to leave the Behring-Werke which I would not have been able to inject into my own children."



When therefore, only a few days after the conference at the Reich Ministry of Interior the Waffen SS Hygiene Institute in Berlin, of which Dr. Mrugowsky was the director, ordered by telephone 630 containers of typhus vaccine from the Behring-Werke--six hundred containers for the Ministry for Eastern Territories and 30 containers for the Waffen SS Hygiene Institute in Berlin--Dr. Demnitz deduced from this fact that the Waffen SS Hygiene Institute had included the Behring-Werke vaccine in the above-mentioned tests.

But even before those 30 containers of typhus vaccine were dispatched to the Waffen SS Hygiene Institute at Berlin, Berlin sent through a telephone instruction saying not to send 30 containers to the Institute, but to increase the order to 50 containers which were to be sent to "SS Obersturmführer Hoven, Camp Physician of the Buchenwald Concentration Camp". This delivery was then actually dispatched. Dr. Demnitz did not have any doubts in this matter, for it was up to the Hygiene Institute and or Dr. Mrugowsky to make arrangements concerning the vaccine. Another point was that typhus might have broken out both in the Buchenwald Concentration Camp and its immediate vicinity, which in turn was just as suitable a testing ground for comparison as, for example, the delousing establishments in the East. Furthermore, he could not have any doubts for the simple reason that this vaccine is quite harmless. This vaccine is actually meant to protect people from infection.

On 5 May 1942 Dr. Mrugowsky sent a report about the result of the typhus vaccine experiments which, amongst others, was also sent to the Harburg Behring-Werke. This report contained a passage stating that the protective vaccinations with typhus vaccines had been conducted on persons of four different groups "within the same epidemic stage".

It had been ascertained that "there was no doubt left that a degree of immunity against typhus could be used with the vaccine produced from chicken eggs comparable to the vaccine which was manufactured by the Weigl method." This report made no mention at all that the experiments had been conducted in an illegal manner. Dr. Demnitz did not learn about the way these experiments had been conducted and the actual reasons which had prompted Dr. Krugowsky to write the above mentioned report. As a witness in the doctors' trials, Dr. Krugowsky had stated that his superior, Grawitz, had ordered him to draft the report concerning the comparative typhus vaccine experiments in such a way that the manufacturing firm could not learn anything about the subsequently effected artificial infection. This report imparted to Dr. Demnitz as a scientist only the positive knowledge concerning the protective effects of the vaccines manufactured by the protective effects of the vaccines manufactured by the Behring-Verke. Consequently, Dr. Demnitz saw no reason to instigate any special steps. He considered this report final.

The argument advanced by the prosecution that the Behring-Verke were bound to be suspicious when they were instructed to send the typhus vaccine for comparative experiments to Buchenwald because it had been stated at the conference in the Reich Ministry of the Interior that altogether the Reich proper was free of typhus, is solely based on the erroneous opinion held by Ministerialrat Bieber. All the other participants in the conference, especially the Behring-Verke, knew of the many epidemic areas which had appeared all over Germany.

Also, when the prosecution argues that there had been a "plan for experiments in agreement with Dr. Krugowsky", has been refuted by Dr. Demnitz and Dr. Krugowsky. The memorandum

of Dr. Demnitz, which has been submitted in this trial, shows in particular that Professor Gildmeister and Dr. Krugowsky had agreed upon a plan for experiments, and that means that this plan had not been discussed between Dr. Krugowsky and the Behring-Werke.

Professor Kudicke had reported at the conference in the Reich Ministry of the Interior on 29 December 1941 that he had used the Behring-Werke vaccine during the two preceding months and that he had used up to three thousand containers for various highly endangered people, without having once failed to establish the effectiveness of the vaccine.



From that the Prosecution draws a conclusion that Dr. Dernitz could not have failed to become suspicious because of the fact that he had been instructed to supply no more than 50 containers of vaccine for the comparative experiments, and the Prosecution continues its arguments by stating that this particular fact clearly proves that an illegal experiment was to be conducted. Contesting this view, Dr. Dernitz specified in detail that the vaccinations as executed by Professor Kudicke were not an experiment but were rather a regular vaccination procedure. On the other hand, the experiment which was to use the standard lice vaccine as a comparison was claimed as ascertaining a practical scientific result. However, this is only possible if the vaccinated persons are continuously under medical supervision, which was not the case as far as Kidlick's vaccinations were concerned.

Furthermore, the Prosecution pointed out that the Behring-Werke supplied their typhus vaccine to Buchenwald "free of charge". They claim that this would imply a purely business point of view on the Behring-Werke's part as far as their interests in the experiments were concerned. However, I was able to prove against this that the Behring-Werke had a general policy of supplying vaccine for experimental purposes free of charge. For example, on 20 May 1942, the Behring-Werke wrote to the government-sponsored Institute for Hygiene in Warsaw that they had supplied free of charge vaccine, which had been produced by the Cox method, for 200,000 to 250,000 persons.

Finally, I feel bound to contest the argument of the prosecution in its trial brief, Part III, Sub-section 111, where they state that the purpose of Dr. Dernitz's sending the typhus vaccine to the Buchenwald Concentration Camp was "keeping his promise as mentioned in his report given before the conference on 29 December". As I have mentioned before, the point where the experiments were to be conducted was not even discussed at the conference. In actual fact Dr. Dernitz forwarded the vaccine to Buchenwald, after the first

dispatch instructions had been superseded by new ones from Berlin by an affidavit of the official in charge of the Behring-Werke Dispatch Office, Andreas Hilbernger, and Dr. Dennitz's testimony, I have proved that the Behring-Werke sent only one typhus vaccine shipment to the Buchenwald Concentration Camp. This shipment was dispatched on 14 January 1942, and it consisted of seven packages with 25 cubic centimeters of typhus vaccine. In order to prove my point I handed such a package to the High Tribunal. It is approximately 10 centimeters long, and approximately 4 centimeters across. The affiant called by the prosecution, Dr. Hoven, mentioned boxes and large packages in which the typhus vaccine arrived at the Buchenwald Concentration Camp in Spring 1942. However, it is quite impossible that the above-mentioned were shipments from Harburg-Behring-Werke. In actual fact, the Ding Diary shows that Dr. Ding received vaccines from numerous other firms and offices, amongst others from the following:

- Pastour Institute, Paris
- Hygiene Institute of Zurich University
- Serum Institute of the Riga University
- State Serum Institute in Copenhagen

The Behring-Werke did not dispatch more than another two shipments of the same size, one of which went to Dr. Ding's Berlin address and the other one to Dr. Hrugowsky in Berlin. This specified listing of names of the persons who received the typhus vaccines at the same time refutes the assertion of the affiant for the prosecution, Dr. Hoven, who had stated that the address of the recipients of the vaccines had been cover addresses.

If Dr. Hoven states that the correspondence between the I.G. Farben and Dr. Ding was signed by him as an outsider and upon his express instructions, in order to disguise the actual address, and that Dr. Ding did not have any knowledge of the typhus problems, this fact merely indicates that Dr. Ding intentionally deceived the

Behring-Werke.

The affiant for the prosecution, Arthur Dietsch, a concentration camp Kapo with a long criminal record, states that Dr. Ding had told him that the evaluation standards for the various I.G. vaccines were communicated to the I. G. and that the Behring-Werke had been extremely disappointed about the results. In this connection Dr. Demnitz declared an oath that he did not receive any information concerning the evaluation of standards other than Dr. Mrugowsky's report of 5 May 1942. He continued, this report had been a summary information asserting that a chicken egg vaccine also effected immunity against typhus, and that this vaccine was equally effective as the vaccine derived from lice, and consequently there had been no reason for him to be disappointed; on the contrary he had been very satisfied. In order to emphasize this fact Dr. Demnitz pointed out that the Behring-Werke have continuously disturbing the typhus vaccine derived from chicken eggs to this very day and that 90% of the Behring-Werke vaccine production are being delivered to the American authorities. I am of opinion that these clear statements of Dr. Demnitz, who is above-board and who made those statements under oath, should be evaluated to a higher degree than the rather beruddled statements made by Dietsch, who in the Buchenwald trial himself was sentenced to 15 years' imprisonment in August 1947, because of his participations in concentration camp crimes.

The affiant for the Prosecution, Dr. Kogon, who was Dr. Ding's medical clerk in the Buchenwald Concentration Camp, stated that he had written comprehensive reports about each individual patient; he mentioned that, amongst others, the Behring-Werke had been named on the distribution list of these reports. He stated explicitly that the copies of these reports went to Dr. Mrugowsky to be forwarded. In its trial brief Part III, number 119, the



Prosecution states those facts incorrectly by claiming therein that Kogen sent statistics and tables to the I. G.

In this connection I would like to refer to the case-in-chief according to which the Behring-Werke never received any such sick reports concerning persons who had been subjected to experiments.

The Tribunal will recall the scientific exactitude with which Dr. Demnitz answered all questions put to him. Furthermore, the High Tribunal will remember his indignation in refuting the allegation that he had been an accomplice with such a criminal as Dr. Ding. Surely, the vaccines supplied could not have caused harm to anybody. Dr. Demnitz could not possibly have imagined that, subsequently, Dr. Ding artificially infected these persons who had been immunized with the Behring-Werke vaccine with living bacilli, and Dr. Demnitz credibly testified that he could not have imagined such a fact. He was quite justified in pointing out that if the Behring-Werke had agreed to and approved of Dr. Ding's experiments Dr. Ding would certainly have ordered the living bacilli for his artificial infections from the Behring-Werke, and have not confined himself to ordering only the vaccine. As it was, in Germany the Behring-Werke were the agency where such bacilli were bred up to the highest point of effectiveness. Such cultures of bacilli for breeding purposes are, however, a condition for the manufacture of effective vaccines.

Countering this convicting statement of Dr. Demnitz, the prosecution has pointed out that in 1942 Professor Bieling met Dr. Ding at the Berlin Hygiene Institute of the Waffen SS, and that he had been informed about Dr. Ding's experimentation methods at that time. I would like to make the following comment on this point. When war broke out Professor Bieling was drafted by the Wehrmacht, and from that time on his connections with the Behring-Werke ceased altogether. He was a high ranking military medical officer, and his visit to the Hygiene Institution of the Waffen SS took place in an official capacity. It is true in his affidavit Professor Bieling

testified that Dr. Ding had been in general informing him concerning his experiments not, however, that he could infer from this that Ding had performed illegal experiments on persons who had not submitted voluntarily to such tests. Even though he addressed a letter to the Behring-Werke concerning Dr. Ding's negative results, this letter, according to the express testimony of Professor Bieling, did not contain reference to illegal experiments but simply made references to Dr. Ding's scientific unsuitability. Dr. Dermitz credibly testified that Professor Bieling never told him anything from which he could deduce illegal experiments on the part of Dr. Ding either in the letter mentioned above or in a subsequent meeting. It must be added that the meeting between Professor Bieling and Dr. Ding did not take place until some time after the conclusion of the typhus vaccine experiments. The problem which is facing us here then is simply to ascertain that the Behring-Werke, as Dr. Dermitz testified under oath, did not learn anything of the pseudo-scientific experiments which had been performed by Dr. Ding in the Concentration Camp at Buchenwald until after the end of the war.

The Prosecution has cited a few other deliveries from the Behring-Werke which were mentioned in Ding's diary. In its original argumentation the Prosecution also wished to imply illegal conduct on the part of the Behring-Werke. Nevertheless it subsequently did not go into these points further. However, the Tribunal will recall that Dr. Dermitz himself attached importance to clearing up in detail every one of these individual points. This concerns first of all the Yellow Fever vaccine tests which are mentioned in the Ding diary from 13 January 1943 to 17 May 1943. As Dr. Dermitz testified the order for this originated not with the SS but with the Military Medical Inspector in Berlin. Tests as to its efficiency for mass application was something quite customary so that the Behring-Werke suggested carrying out such tests on the employees of the Behring-Werke. The Military Medical Inspectorate however, demand

that the vaccine be first subjected to conditions of extended transportation in order thereby to ascertain the quality and reliability of the transportation containers. Therefore, it ordered that the shipments be made to the "Hygiene Institute of the Waffen SS-Weimar-Buchenwald". The Behring-Werke were not aware that the experiments were supposed to be carried out on concentration camp inmates. Dr. Dermitz did not learn until after the war through Kogon's book "The SS State" of the connections between the Hygiene Institute Weimar and the Buchenwald Concentration Camp. The general consensus of opinion in the Behring-Werke was that vaccinations were to be made on various troop units who were shortly to be sent to Africa. One could not infer from the results as reported from the Hygiene Institute of the Waffen SS that experiments were made in the concentration camps. Since the vaccination records simply contained the initials and age of the persons vaccinated. Incidentally, Yellow Fever vaccination is just as harmless as Small Pox vaccination.

A further entry in the Ding Diary from 8 November 1943, to 17 January 1944, mentions concentrated immunization experiments with Frankel vaccines. This fact was also explained in detail by Dr. Dermitz. This was a discovery of the Behring-Werke which was intended to render persons immune to the very dangerous *gangrene bacillus*. The vaccines were requisitioned by the German Military Medical Inspectors for the General Medical Depot in Berlin. The SS and the Hygiene Institute of the Waffen SS then obtained the vaccines from this source. Also at that time it was not possible for the Behring-Werke to realize that the vaccinations were likewise not dangerous. On the contrary they offered highly potent protection to the persons vaccinated. The taking of blood tests of those persons vaccinated served to show the protective effect which resulted. This is a customary practice and a routine matter for vaccine plants. It could not be inferred from the correspondence carried on in this matter that the vaccinated persons were prisoners. Neither does the



study of the Ding diary reveal any clue which would indicate that Dr. Ding did anything else with this vaccine but to administer a completely ethical protective vaccination against gangrene.

Experiment Series IV mentioned in the Ding diary from 27 October 1942 to 8 November 1942 was allegedly carried out with lice intestine vaccine according to the Weigl process which the Behring Institute at Lwow was supposed to have sent. This was a typhus vaccine which at that time was known as the best. The Behring Institute in Lwow worked independently. The Behring-Werke in Marburg were at their disposal for any fundamental questions which arose. No supervision was exercised from Marburg. Such supervision could not have been exercised because of the distance factor. Moreover such supervision under the prevailing conditions--the director was a first-class reliable expert---did not seem necessary at all.

If I consider the result of the case in chief in its entirety insofar as this concerns the use of typhus vaccines and the other vaccines mentioned in the Ding diary of the Behring-Werke in Marburg and/or the Lwow Institute then I must state that I can find nothing to indicate that any harm resulted from the use of these lice vaccine salts. It was also beyond the knowledge of the Behring-Werke as well as beyond the possibilities of exercising influence which is self-evident, that Dr. Ding subsequently subjected the vaccinated persons to artificial infection, that is, made them sick, in a manner which could be described as criminal.

For a moment I must go back again to the premises from which I proceeded; what responsibility does Professor Lautenschlaeger bear for the deliveries of the Behring-Werke mentioned above? Dr. Demnitz stated under oath that in spite of the fact that the Behring-Werke were taken over by I. G. Farben the former retained extensive independence. This was attributable to the diversity of tasks: the Behring-Werke produced natural products which were used for prophylactic purposes, whereas it was the job of Hoechst to produce synthetic medicines through chemical processes. These two fields are extremely comprehensive and no one person can have a complete knowledge of such fields. Therefore Dr. Demnitz bore the full responsibility for production and Professor Lautenschlaeger, who was above all a chemist and pharmacologist and no specialist in the field of vaccines, gave the Behring-Werke free rein to the greatest extent. According to governmental "Regulations Concerning Vaccines and Serums" it was not Professor Lautenschlaeger who was responsible person for production to the government but Dr. Demnitz.

In the beginning Professor Lautenschlaeger visited the Marburg plant at 4 to 6 weeks intervals, later every two or three months. These visits lasted approximately two hours. During this time only fundamental questions were discussed, for example construction problems, the procurement of apparatus and equipment. Details concerning the delivery of vaccines were never discussed. Thus for example Dr. Demitz did not even send the final report of Dr. Mrugowsky dated 2 April 1942 to Professor Lautenschlaeger concerning the comparative typhus vaccine test. Neither did Professor Lautenschlaeger learn anything of the letter written by Professor Bieling to Dr. Demnitz concerning — as Professor Bieling himself stated — the slipshod and unquestioning acceptance of results by Dr. Ding in carrying out the typhus vaccine tests.

The former director of the Behring Institute in Lwow, Dr. Haas, in referring to the Lwow Institute, made the same statements as did Dr. Demnitz concerning the independence of Marburg.

Therefore, in summing up it can be stated that not Professor Lautenschlager but Dr. Demnitz for Marburg and Dr. Hess for Lwow were the responsible persons if any change at all should be brought against these plants. However, I believe I have proved that the conduct of the responsible directors of these plants was beyond reproach.

## 2. Sphere of Work at Hoechst

The Prosecution further brings charges against Professor Lautenschlager which effect his own medical sphere of work in the Hoechst Plant, namely concerning the test of Nitroakridin on persons suffering from typhus. The Nitroakridin was produced in the Hoechst Plant. This medicine had a long history behind it and was already well known as a commercial preparation used for treating various infections diseases. When the typhus danger became more and more threatening a search began in the chemotherapeutical laboratory of the Hoechst Dye Plant for a medicine which would be effective against typhus. In exhaustive experiments performed on mice a suitable medicine was found in Nitroakridin. The persons engaged in testing this preparation were given a "memorandum" which explained the details of this preparation. This contained an exact description of the makeup of the preparation, results from experiments conducted on animals, instructions for the use on human beings and also included the experiences gained from using this preparation in cases of typhus and other diseases. It showed that the mortality rate of typhus infected mice who were untreated amounted to 91.6% whereas the mortality rate of mice which were treated with this preparation amounted to only 48%. This memorandum carried the following significant introductory sentence.

"Chemotherapeutical medicines for true typhus with specific efficacy are unknown up to the present time."

In other words the Hoechst Plant of the I. G. Farben was the trial-blazer in the fight against this dangerous epidemic.



No newly discovered medicine reaches such a point in its initial stages that it may be turned over for commercial use. Even in the cases of new type of serums developed from old, well-known medicines, preliminary tests on a few individual patients concerning the tolerability and possible incidental effects are required. For example, a decree of the Minister of Interior from 1935 prescribes that of each quantity of the preparation Saldarsan produced a certain number of preliminary tests must be carried out in public hospitals recognized by the government before the preparation may be made available to the public. The Nitroakridin preparations of the Hoechst Plants were first distributed to experienced and reliable testing personnel as an anti-typhus medicament under the name of "Rutenol" and "3582" to be tested on patients suffering from this disease. The handling of this medicine was no different than in the case of the approximate fifty other test preparation which the Hoechst Plant brought out in the years 1940 to 1945.

The chief physician of the large Hoechst Municipal Hospital, Dr. Auer, who likewise was one of those who tested the Hoechst preparations, states in reference to the memorandum concerning the Nitroakridin preparations.

"The physician who conscientiously follows these regulations can do his patients no harm".

Among other scientists also Dr. Krugowsky, chief hygienist of the Waffen-SS and Commissar for Epidemic Diseases Ost, in Berlin, discovered that a chemotherapeutical drug against typhus was manufactured in Hoechst. He was interested in the preparation and received further information about it from Dr. Weber. Dr. Weber was the scientist of the Hoechst Plant who established with the individual testing personnel of the Hoechst preparations, gave them advice and kept them informed of their respective experiences. Dr. Krugowsky was known to the Bayer

representation in Berlin as a well-informed scientist and was described to Dr. Weber as "the best man in the medical corps of the SS". At Dr. Mrugowsky's request it was agreed that in the Bayer office in Berlin a certain supply of the preparation should be made available so that Dr. Mrugowsky, when necessary, could at any time order sufficient quantities for his troops. Dr. Weber could by no means feel any hesitation in making the preparation available to Dr. Mrugowsky. When Dr. Weber was in the Bayer office in Berlin in February, 1943, Dr. Ding, whom he did not know before, came to the office at the same time. Dr. Ding told Herr Weber he had been commissioned by Dr. Mrugowsky to take care of the testing of the Hoechst typhus preparations. He pretended to be a clinical SS expert for typhus questions; he asserted that he had experience in the therapeutic field and that he had received his medical education at the Pasteur Institute in Paris. Dr. Weber's confidence in Dr. Ding was strengthened by the fact that he had been introduced to him by the Berlin Bayer representation as a qualified physician belonging to the staff of the main medical department of the Waffen-SS in Berlin. At that time it was settled that Hoechst was to send a memorandum for Dr. Ding on preparation 3582 and test samples of the preparation in granulated form to "Dr. Hoven, Garrison Physician of the Waffen-SS, Weimar".

The Prosecution makes an effort to show that it was known in Hoechst that this address actually was a disguise for the Buchenwald concentration camp. As proof it introduces from the general correspondence of Hoechst a letter from "Buchenwald Concentration Camp, Camp Physician, Weimar-Buchenwald" dated March, 1941 in which an inquiry is made as to whether Hoechst is willing to exchange remaining stocks of Hoechst preparations in the camp for new ones. The document is insufficient to establish the proof for the addressed differ essentially. To this must be added that Dr. Ding told Dr. Weber that he treated cases of typhus everywhere, soldiers in the front sectors as well as soldiers on

leave and taken ill in Germany. Therefor there was no reason to wonder why Dr. Ding had to treat typhus patients also in Weimar. According to his own statements he remained stationed in Berlin, and during the following time he also continually telephoned and conducted his correspondence from Berlin.

About the tests made by Dr. Ding with the preparations, Hoechst did not learn any particulars until 14 April 1943, when Dr. Ding at his own request was invited to Hoechst to inspect the laboratory for animal experimentation. At that time it came to a short discussion with Professor LAUTENSCHLAGER in which Dr. Ding reported on his alleged results. The surprising result of his explanations was that the typhus preparations were not satisfactory as therapeutic drugs. This should be demonstrated, according to Dr. Ding's statements, by a series of curves which he had with him but which he did not surrender for examination. These negative results were surprising because they were considerably less encouraging than those which Dr. Weber had so far learned from other examiners. When Professor Lautenschlager asked for scientific details, Dr. Ding gave evasive answers. As testified by the witnesses of the conversation, the impression was left that he was no competent scientist. Therefore Professor Lautenschlager pressed for a speedy conclusion of the conversation and finally made it clear to Dr. Ding that no further experiments with the preparations were to be carried out since according to his results no such experiments appeared justified.

When Dr. Ding had left, Professor Lautenschlager instructed Dr. Weber directly not to supply Dr. Ding with any more preparations to be tested and thus eliminat him as an examiner. This instruction was strictly observed. This has been clearly testified by Dr. Weber. Moreover, the two file cards which were kept in Hoechst on the correspondence with and deliveries to Dr. Ding and Dr. Hoven constitute clear documentary evidence to this effect. It appears from them that following



the visit of Dr. Ding no more preparations were delivered to him or to Dr. Hoven. The High Tribunal will remember these file cards. They were kept with scientific accuracy and contain by means of code words exact notes on every official correspondence and every conference. Subsequent to 13 April 1943, no deliveries of nitro-acridine preparations have been entered. Further documentary evidence is furnished by a letter from Dr. Ding dated 11 July 1944, introduced by the Prosecution. In this letter Dr. Ding writes to Professor Lautenschlaeger: " I regret to say that since our last meeting (the one of 14 April 1943 is meant) I have heard nothing more from in in this matter".

THE PRESIDENT: This will be an appropriate place to take our recess. The Tribunal will rise.

(A short recess was taken at 1030 hours)

(AFTER RECESS)

THE MARSHAL: The Tribunal is again in session.

DR. EISENHAETTER, for the defendant Prof. Lautenschlaeger (continuing)

Out of this very simple combination of facts the Prosecution makes a labyrinth which it is hard to disentangle. It alleges that Hoechst, prompted purely by the desire for profits, let the nitro-acridine preparations in their various applicable forms be tested in the Buchenwald concentration camp because there human beings could be made available against their will. In no other places could the preparation have been tested because it was ineffective so they say. Through presentation of many test reports I have proved that the testing of this preparation was carried out by numerous examiners with a strong sense of duty as physicians, who reported to Hoechst about their experiences. Thereby it occurred that certain unfavorable secondary effects appeared, such as vomiting and general indisposition. But this could not and ought not to prevent conscientious physicians from trying to find always new and better compatibilities in the application. The best results were achieved by the Austrian Professor Holler, commissioned as examiner, in a Viennese reserve field hospital. Almost 2000 soldiers sick with typhus who were treated by him owe their recovery to the Hoechst nitro-acridine preparations. Dr. Weber, the personally in Holler's clinic convinced himself of the effects of the preparations, comes to the conclusion that the complaints of bad compatibility of the nitro-acridine preparations were due far less to the preparations themselves than to the lack of care on the part of the nursing staff.

In Hoechst it was not known that Dr. Ding had conducted his experiments in a concentration camp. But even if one had been aware of this, one would not have withheld the preparation from concentration camp inmates suffering from typhus, at least not until one had acquired knowledge of the unsuitability of Dr. Ding. The Hoechst gentlemen realized the unsuitability of Dr. Ding during his visit on 14 April 1943, and

immediately drew the consequences of their impression.

That Dr. Ding was actually not only an unqualified scientist but even a criminal, that, on the other hand, was not realized by a Professor Lautenschlaeger and his assistants. This the witnesses, who attended the conversation, Dr. Fussganger and Dr. Weber, confirm concurrently. Dr. Fussganger says:

"In the conversations Dr. Ding gave vague answers. I did not get the impression that he was a serious and responsible scientist. But

it was never indicated during the conversations that Dr. Ding conducted the tests in the unscientific and ethically - entirely unjustifiable way as later described by Dr. Kogen in his book: "The SS State". And Dr. Weber states:

"Dr. Ding revealed himself during the conversation to be an inexperienced, ambitious career man without the professional qualifications required for an examiner of drugs. But by no means did it in the course of the conversation become obvious or even probable that Dr. Ding applied our acridine preparations to artificially infected persons, these persons being concentration camp inmates."

It could never occur to serious scientists that Dr. Ding at a time when typhus cases were abundant, infected human beings artificially with typhus in order to cure them afterwards with the Hoechst nitro-acridine preparations. This idea was completely alien to their way of thinking. Apart from the criminality of such procedure, Dr. Ding's experiment was, from a medical point of view, complete madness. For the excessively strong infection through injection of fresh blood from typhus patients into the veins of the unfortunate victims could not have been combatted either with the Hoechst or any other drugs because no natural cases of such infections occur.

Since Dr. Ding in Hoechst had been unmasked as an unqualified examiner, although not as a criminal, he was from 14 April 1943 by order



of Lautenschlaeger at least, separated from the group of physicians receiving test preparations from Hoechst. However, the competent consultant, Dr. Weber, as he himself has testified in detail, did not break off connections with Dr. Ding suddenly. It is absolutely sure, however, that Dr. Ding did not receive any more test preparations of any kind from Hoechst. Dr. Weber was nevertheless of the opinion that the tables and curves promised by Dr. Ding has to be carefully checked. Dr. Weber testified that this was the reason for his private letter to the chief surgeon Professor Bieling, submitted by the Prosecution, in which he refers to the documents promised by Dr. Ding. Dr. Weber had also the intention later in Berlin to personally look over the original documents concerning Dr. Ding's test results, to which he had been invited by Dr. Ding. But this never took place, as testified by Dr. Weber.

Considering the political conditions prevailing in Germany at that time it was not so simple for the witness Dr. Weber to obey the strict order of Professor Lautenschlaeger to eliminate immediately Dr. Ding as examiner of the Hoechst preparation. Nevertheless Dr. Weber in a way worthy of recognition succeeded in excluding this dangerous SS-physician at least from the position as examiner. Following his visit in Hoechst Dr. Ding called up Dr. Weber a few more times and wanted typhus preparations applicable by way of injection. Dr. Weber dissuaded him from insisting on this wish, although such Hoechst preparations were being tested at that time in other places. On the other hand Dr. Weber complied with personal wishes of Dr. Ding in order to avoid further resentment. He supplied him with scientific literature, cannulas for venipunctures and millimeter paper. Even these supplies have been carefully entered upon the two Hoechst file cards.

The Prosecution has attempted to substantiate its allegation that Hoechst retained Dr. Ding as examiner even subsequent to 14 April 1943 through reference to these small favors. Among other things it quotes a letter from Dr. Weber to Dr. Ding dated 15 June 1943 which reads:

"Your other requests are being worked on and it will be possible to fill them within the next few days". However, the card files clearly indicate that this referred to a shipment of Chromosal and Neutrogen which Dr. Ding had requested for the tanning of animal hides. This was also unequivocally confirmed by the witness Jeck.

It seems to me that the actual date on which the "Therapeutic tests with Akridin-Granulat and Rutenal", were conducted which are referred to in the Ding diary under the dates from 24 April 1943 to 1 June 1943, has not been clarified and cannot be clarified. In this instance the Ding diary contradicts Dr. Ding's letter of 11 July 1944 which was introduced by the Prosecution. In this letter Dr. Ding writes that the therapeutic tests had been carried out during the time from January until the end of April 1943: "As you know the tests conducted on 39 persons suffering from Typhus were negative." This would seem to indicate that Dr. Ding was of the opinion that the results of these tests were already on hand at the meeting of 14 April 1943. One might rightfully surmise that this series of tests was already in progress when Dr. Ding arrived at Hoechst. At any rate, these circumstances cannot be explained, as was done by the prosecution in its Trial Brief, Part III, No. 135, Paragraph c., as meaning continued co-operation between Professor Lautenschlager and Dr. Ding after the latter's visit. The contrary was proven.

There is yet another quite neutral and impartial testimony which shows that the break between Hoechst and Dr. Ding in the field of therapeutic tests came all of a sudden on 14 April 1943. After the war the medical clerk of Dr. Ding, Dr. Eugen Kogon published his well-known book "The SS-State". In the specific paragraph of the 2nd, 1947, edition of his book, which I introduced, Dr. Kogon mentions that after the publication of the first edition he had learned from Dr. Weber and Dr. Fussgaenger that Hoechst had been of the opinion that Dr. Ding was treating soldiers suffering from Typhus in SS-Hospitals. I further quote the following paragraph on page 160 of the book:

"When they had to realize from the obviously suspicious circumstances that the tests were taking place in the concentration camp Buchenwalde they broke off, relations - in agreement with their superior Lautenschlaeger. From my activity with Dr. Ding-Schuler I can confirm as true the last assertion."

The prosecution further tried to prove that the Hoechst plant used cover addresses in shipping the Nitroakridin preparations to Dr. Ding. I was able to prove the contrary, on the one side by the two file cards, to which everyone had access, and on the other hand through the testimony of the director of the Hoechst Pharma office, Jeck. When correspondence concerning new preparations was classified as "confidential" in Hoechst, then this was not done, as is claimed by the prosecution, in order to conceal something illegal. It is a common practice to keep every preparation that was being tested confidential as long as possible in order to prevent the competitors from learning about it too soon. Another viewpoint in maintaining secrecy aims at avoiding false hopes and expectations among the population until it has been established whether a preparation can actually be used with success against a certain disease.

The Prosecution now thinks to possess a medical substantiation for its claim that Hoechst knew the result before Dr. Ding's visit and that it co-operated with him. It refers to Dr. Weber's advice to Dr. Ding to the effect to commence treatment of the typhus patients not only after the disease was three days old but sooner. The Prosecution has introduced a telephone memo to this effect and argues that at such an early stage it is impossible to diagnose typhus. Against this contention there are numerous statements from experts. Two witness Dr. Weber probably had gained the best insight into methods and success in the treatment of typhus patients. He always held the opinion that patients who in infected surroundings contracted fever and had lice should, as a matter of principle, be treated at once with Nitroakridin. Also



Professor Bieling in his expert opinion states that a conscientious physician should consider any newly infected patient in the neighborhood of typhus patients as a typhus suspect and should administer typhus treatment at once without waiting for ultimate substantiation of the diagnosis.

The Prosecution attaches special significance to the fact that the correspondence between Hoechst and Dr. Mrugowsky did not cease after Dr. Ding's visit. From this fact it is concluded that Hoechst continued the tests with Dr. Ding. - I must emphatically refute this conclusion. Dr. Mrugowsky was the Commissioner for Epidemics for the entire Eastern Territories, and the Supreme Medical Officer of a Wehrmacht section; he also was a professor at the University of Berlin. Dr. Ding merely was one of his many subordinates in one of his offices. It was known at Hoechst that Dr. Mrugowsky had given the Nitroimidazole preparations to various hospitals in the Eastern Territories and to Berlin and Prague for tests. Hoechst was interested in getting the results of these tests. It therefore is completely wrong to name Dr. Ding and Dr. Mrugowsky in one breath. The prosecution did not offer any evidence at all to show that Dr. Mrugowsky

himself also conducted any illicit tests with the Nitroakridin preparations or that the correspondence between Hoechst and Dr. Mrugowsky offers any proof for illegal tests.

In concluding the discussion of questions connected with Ding's Nitro-Akridin tests, I must yet refer to Professor Lautenschlaeger's affidavit of 2 May 1947. Contrary to the testimonies of the witnesses when I mentioned he states under section 11 that after his discussion with Dr. Ding it had been clear to him in view of Dr. Ding's explanations concerning artificial infections that he was conducting his clinical tests not on soldiers sick with typhus but on artificially infected persons. In itself this statement in the affidavit by the defendant Lautenschlaeger does not alter anything with regard to the defendant's attitude in the Dr. Ding incident, and which, as I have proved, was entirely correct. In any case the immediate severance of relations with him as a tester has been substantiated. But I must again at this point call attention to the bad state of health, which is already known to the Court, and to the other circumstances from which the defendant has been suffering for a long time. The High Tribunal will remember my various petitions in this respect and also will recall the medical certificates.

I have reason to believe that the defendant Lautenschlaeger has made an error in preparing the affidavit. In this respect the witness Dr. Weber has thoroughly explained in what connection the term "infection by doses" actually was used and how it must be construed. I shall deal in detail with this question in my Trial Brief. In view of these facts one cannot consider Professor Lautenschlaeger's statements as a confession which conforms to the truth and which would show that he had recognized Dr. Ding as Criminal. At any rate he severed his relations with Dr. Ding after the latter's visit. Moreover, I cannot find even under most thorough scrutiny any indication in Dr. Ding's diary that after that date he used Hoechst or Marburg preparations

in connection with illegal tests. With regard to this last point Dr. Demnitz declared that after 14 April 1943, when Hoechst had decided against Ding as a tester, the vaccine comparative tests had already been completed for a long time. As early as November 1942 Dr. Ding obtained yellow fever vaccines from the Army Medical Inspector's Office and not from the Behring plants; he also received gangrene vaccines on the round-about-way from the Army Medical Inspector's Office. Dr. Demnitz declared that the Behring plants probably would not have turned down direct requests for these preparations by Dr. Ding since as a registered physician he was entitled to ask for them. Furthermore, one could find nowhere any sign that Dr. Ding had done any harm with these vaccines after 14 April 1943.

In summation may I state that the prosecution's charge that Professor Lautenschlaeger had intentionally closed his eyes to criminal experiments is not correct. The contrary is established. As soon as Professor Lautenschlaeger became suspicious of the tester Dr. Ding he broke off all relations with him. At the same time, I maintain, on the basis of extensive evidence that Professor Lautenschlaeger at that time did not realize at all that Dr. Ding was a criminal, but merely recognized that Dr. Ding was not a man with sufficient scientific qualifications for the position of a tester. All the more value must be attached to his watchful and resolute way of acting. It is to the credit of Professor Lautenschlaeger that by severing relations with Dr. Ding in time he dissolved a relationship between the Hoechst Circle and a physician who had disgraced himself. He thus demonstrated his unconditional conscientiousness and scrupulous conception of the ethics of the medical profession.

There remain two other groups of letters from the medical field of activities in Hoechst which the Prosecution introduced as evidence. The first group comprises documents concerning the tests



with Hoechst medicaments in mental hospitals. I can be very brief in this respect. The prosecution tries to see also in this instance a symptom for Hoechst's efforts to have its drugs tested on non-volunteers. Through the testimony of Professor Dr. Lehman Facius, I have proved that these medicaments were used successfully on patients of the Neurological clinic of the University of Frankfurt on-the-Main as shown by the case histories, in other words, that testing and therapeutic success were concurrent.

The second group comprises documents which concern tests made by Dr. Vetter who formerly belonged to the Leverkusen Plant conducted with Hoechst Drugs. In this connection I refer entirely to the case in chief by the defense counsel for the defendant Hoorlein. He has proved that nothing was known in Leverkusen of criminal acts on the part of Dr. Vetter. Dr. Vetter was not selected tester by Hoechst but by Leverkusen and among other things received also Nitroaktridin preparations from Leverkusen. For this reason Hoechst was not obligated to conduct a further check since it was known there that Dr. Vetter had prior to becoming a soldier been a reputable co-worker at Leverkusen. Of his illegal tests nothing became known in Hoechst either.

May I say a few words yet with regard to the use of Nitroaktridin preparations by Dr. Vetter in the case of tuberculosis patients. To date there exists no specific means of combating pulmonary tuberculosis. When Dr. Vetter in his own research activity noted certain successes in the treatment of pulmonary tuberculosis patients this work was only to be welcomed and Hoechst was justified in making available the medicaments for this purpose. The Prosecution itself did not claim that Dr. Vetter treated any but persons who had become sick from natural causes. It is only of the opinion that the medication was worthless and did not show any success in the treatment of patients suffering from pulmonary tuberculosis. In contrast

to this opinion I have introduced two letters of a former concentration camp inmate who previously had been treated by Dr. Vetter against tuberculosis with the Hoechst Nitroakridin preparations. He remembered the good success of the treatment and asked Hoechst again for this medicine during the last year when he experienced a relapse. Herewith may I be permitted to conclude the discussion relative to the medical tests.

IV. The Question of accountability as a Member of the  
Vorstand of the I.G. Farben and of the TEA.

I can be brief as far as the remaining charges of the indictment against Professor Lautenschlaeger are concerned. Since 1938 Professor Lautenschlaeger was a member of the Vorstand of the I.G. Farben and of the TEA. On both boards he represented only his special fields. No evidence whatsoever has been introduced to show that he made contributions on any other subject. Thus his accountability can only be considered as part of the discussion of the accountability of the I.G. Farben Vorstand on the whole. In this connection I refer to the general statement of my colleague Dr. von Metzler.

V. Auschwitz.

Professor Lautenschlaeger was never concerned with the employment of concentration camp inmates. May I be permitted at this point to correct an error which the Prosecution has made. In its Trial Brief, Part III, the Prosecution claims under section 194 that Professor Lautenschlaeger had paid a visit to Auschwitz. The Prosecution itself has never offered any proof for this statement. Professor Lautenschlaeger has never been in Auschwitz.

Nor did the Prosecution offer any evidence to show that Professor Lautenschlaeger had concrete knowledge of what went on in the concentration camps, especially about the gassings. When in one of Professor Lautenschlaeger's affidavits there is such a reference the same applies here to what I have already said above about the affidavits of the defendant himself. Director Jechne testified under oath that

this had merely been one of the very common rumors such as were encountered by many Germans in one form or another toward the end of the war.

MR. PRESIDENT, Your Honors,

I know that many people who have been close to the defendant Lautenschlaeger and who know him well regard it as a deep tragedy that this man was placed in the dock at Nuremberg. On the other hand it is clear that the horrible occurrences in the concentration camps demand expiation. Thus, the question came up whether perhaps also the Drug industry had had knowledge of these events and had knowingly supported them. I hope to have proved that the reputation of the Hoechst Farbwerke Dyestuff and of the Marburg Behring-Werke has emerged unstained from this scrutiny and that it will be found that Professor Lautenschlaeger always displayed the attitude of an honorable and conscientious physician. I would be happy if your judgment would confirm this opinion.

I ask for the acquittal and complete rehabilitation of Professor Lautenschlaeger.



THE PRESIDENT: The Tribunal is ready to hear Dr. Berndt on behalf of the defendant Mann.

DR. BERNDT: (Counsel for defendant Mann): May it please the Tribunal:

In my opening statement I said that the "BAYER" Sales combine had a special status within the organization of the IG as a result of the fact that this combine had a certain independence. Thus the chief of this combine, the defendant Mann, also had a certain special status within the Vorstand of Farben. This special position of Mann, which caused his entire strength and interest to be directed only toward Bayer must be taken into consideration in the judgment of Mann as a member of the Vorstand, in the judgment of his knowledge of Farben matters and the judgment of his responsibility for such matters. This does not minimize the importance of his position; it merely puts his position into the proper light. Mann was active solely on behalf of Bayer. His other positions, such as that of Aufsichtsrat of only pharmaceutical companies, were closely connected with his activity as chief of Bayer. Mann did not hold any high positions in political or economic life. With regard to the general questions and in these proceedings and especially with regard to count one of the indictment I refer to the statements which my colleagues and myself in the case *ter Meer* have made heretofore. I do not wish to bother the Tribunal with repetitions.

Under Point I, the Prosecution has accused Mann of having carried out political propaganda, of having carried out espionage, and of having furthered export for the purpose of thereby contributing to the preparation of Hitler's aggressive war. Propaganda activity on the part of Mann is seen mainly in the fact that Mann belonged to the Werberat of the German economy. But the evidence submitted by the Prosecution in this connection shows that the Werberat was not a political propaganda instrument. In accordance with its composition of men of the economy its task was to give jointly advice on specialized advertising on behalf of their enterprise. I have unequivocally

clarified this nature of the Werberat by means of the statements of its president, Hunke. The Bayer's advertising (Bayer-werbung) itself was based on pure business aspects. It successfully prevented itself from being influenced in any way by the party agencies. That has also been proved.

The documents submitted by me show that Bayer's foreign representatives never carried out espionage. The examination of the matter showed unequivocally that the alleged spies, Harmsier, Schob and Homann, who represented Bayer in South America, were never arraigned for espionage. They were merely temporarily detained in the course of a general check-up after those countries entered into the war. They were left completely undisturbed, and at the present time are again carrying on their business in South America. The Prosecution's suspicions have proven unfounded.

It has been proved to what a large extent Mann attached the greatest importance to the behaviour of the representatives abroad who were not to participate in any kind of political activity and who were to avoid any kind of violation of the rights of hospitality. His various letters to the representatives abroad were only intended to avoid, wherever possible, friction with the Auslandsorganisation (Foreign Organization) and other party agencies. That is also how these letters were looked upon by the recipients. It was far from Mann's thoughts to engage in party propaganda. Bayer's so-called "political" contributions, abroad for schools, German clubs and other social institutions, which were so strongly emphasized by the Prosecution, amounted as I have proved, to only the negligible sum of 70 Reichsmark per country per year. In this connection further remarks are superfluous.

It is also not correct that the business policy of Bayer was guided by aspects of party politics, as the Prosecution contends. The fact that Mann entered the party as early as 1932 is no proof of this. The evidence submitted both through witnesses and through documents has shown without doubt that Mann never took an active part in the party.

His entire attitude shows that he was never a so-called "Nazi". In this connection I would only like to mention one fact, namely Mann's attitude with regard to dismissal of Jewish employees. Mann submitted to the pressure of the party only against his own will and only then when it was no longer possible to circumvent the party pressure. In all cases he granted generous compensations or transferred the person concerned to a foreign country which gave the individual concerned the opportunity to start a new life abroad. I have given examples of this by means of several exhibits.

I only want to touch briefly on Bayer's alleged support of Hitler's plans. 70% of the Bayer concern has at all times been an export concern. Hitler's government did not bring with it an increase. Bayer's export plan during the war only served the purpose of maintaining the representations abroad at all.

Mann had absolutely nothing to do with the re-arming of Germany. The only measure in connection with a possible "Mob" case concerned the freezing of personnel, as is customary and required in all countries. Bayer concluded one single "Mob"-supply contract with the Wehrmacht. This contract, however, was far from covering the Wehrmacht's requirements at the beginning of the War. The fact that Mann in no way thought about a war is clearly shown by two facts: His attitude on the occasion of the visit of the Englishmen in Leverkusen in July 1939, and his intention to start his own pharmaceutical production enterprise in France shortly before the war.

I need not say more to count one of the indictment.

Your Honors, I shall now deal with the charges which have been brought against Mann under Count II of the Indictment, the spoliation in France and Russia.

As regards Russia, the Prosecution bases its charge essentially on the fact that Mann was chairman of the Commercial Eastern Committee of Farben.

The Prosecution completely misunderstood the nature of this Committee.



The presentation of evidence, in particular the hearing of the witnesses Krueger and de Haas, the business manager of this Committee, has shown that the Eastern Committee was mainly composed of the heads of the individual sales combines of Farben. Why this Eastern Committee was called into existence is shown by the minutes of the Vorstand meeting of 17 December 1942 (Mann Exh. 310). It had merely the task of establishing a connection between the sales combines in regard to the ever increasing economic revival of the occupied Eastern territories. The committee had no decisive function. The only decision it passed and which clearly illustrated its function referred to the setting up of a sales organization in Riga as the successor to the previous Farben agency there. This Riga Sales Office G.m.b.H. did nothing but sell merchandise to the Eastern territories. It supplied the indigenous population with the most urgently needed commodities, but it took nothing whatever from the occupied Eastern territories. Nor did the Prosecution present any document to prove that this committee had anything to do with the setting up or the operation of Eastern monopolies. This also applies to the 4% interest of Farben in the Continental Oel A.G. which has been dealt with already by my colleague Dr. Flechsner.

The Prosecution proceeds mainly from the situation report of 3 January 1943. An unbiased perusal shows it to be nothing but a report of information which de Haas and other WIFO employees had received from the Ministry for the Eastern territories and other government agencies in regard to economic matters in the East. There is nothing extraordinary about these informative reports, especially in countries with a free press. The author of the report, de Haas, stated in the witness box that the report did not reflect any expressed views of Mann and did not represent any opinion of the Eastern Committee. The charges against Mann regarding alleged spoliation in Russia are therefore unfounded.

Now to the Rhone Poulenc business. Here, the Prosecution faced a difficult situation right from the start. Here the Prosecution was not dealing with the common fact of spoliation, i.e. the taking away of

objects. Nor were there any acts of violence against life, limb and property. It was a matter of the representatives of two companies confronting each other and making a contract in behalf of their respective companies. No German authority had called upon them to do so, no pressure, no measures either against themselves or against their companies compelled them to act as they did. The Prosecution was compelled therefore to represent the conclusion of this agreement as a consequence, not perhaps of open, but of "veiled threats and transparent tricks", as the Prosecution expresses itself, and to designate the voluntary payments for the licenses as payments of "tribute". Everything the defendant Mann did is now being construed as being trickery on his part, a particularly objectionable arbitrary action!

What, then, is the actual result of the evidence presented?

Three contracts were made between POULENC and BAYER; Contract I, dated 31 December 1940, ratified 25 February 1941, Contract II, made orally on the same day, confirmed by exchange of correspondence in March, and Contract III, the so-called Theraplix-Agreement, made out in writing on 3 and 19 February 1942. The conclusion of these contracts was in all cases preceded by extensive oral negotiations and an exhaustive correspondence. The Rhone-Poulenc executives signed these three contracts of their own free will, under no stress or duress whatever. No representative of a German government agency or of the occupation forces ever took part in the numerous conferences of the contracting partners or was present at the drawing up of the contracts. Even Farben was not represented, either by Mann or any other executives, at the signing by Rhone-Poulenc of the contracts or during the writing of the many letters which preceded the agreements. At no time was Rhone-Poulenc urged by anybody to fulfil the agreements. Between 1941 and 1944 they paid the license fees every three months without any reservation!

Nor does the evidence presented in court prove that Mann at any time took, or even only threatened, direct or indirect measures against Rhone-Poulenc in order to cripple or curtail their production or their sales.

Neither by word of mouth nor in writing did Mann and other Bayer representatives ever threaten Rhone-Poulenc with imminent or subsequent curtailments of their business should the agreement fail to materialize.



It may be left open whether German Government agencies thought of the possibility of exerting pressure or proposed to Mann to do so. At any rate, Mann never availed himself of pressure of this kind. The report on the trip of September 1940 offers no evidence for this. First of all Mann did not have anything to do with it, in particular not with its composition. He learned about it for the first time here in Nurnberg. All that can be inferred from the contents of the report is that Government agencies thought of exerting pressure and wanted to make it available. But that such pressure was actually exerted, this the report does not prove. Nor does the report prove that Mann demanded that pressure be exercised. Not one word in this exhibit intimates furthermore that Mann threatened Rhone Poulenc with pressure. The document even fails to prove that Mann in his dealings with Rhone Poulenc did even speak of the possibility of such pressure.

Now, the theory of the Prosecution intends to show that Mann wanted to win over Rhone Poulenc by expressing his apprehensions of the considerable disadvantages which Rhone Poulenc might have to face by the introduction of a new French patent law and as a result of the peace treaty to come. In this connection the Prosecution makes reference to the minutes written from memory of M. B, dated 5 October 1940. It is said that Mann here expressed the thought "that a new French patent law would be enacted which, in a similar way as the German law, would be extended to the protection of pharmaceuticals, with the result that Rhone Poulenc would be exposed to considerable claims for damages caused by their long imitation of Farben products."

The indication to the effect that such a patent law would be enacted in France could not by any means induce Rhone Poulenc to embark upon discussions and contracts with Mann. Rhone Poulenc, by consulting the French Government, could ascertain without difficulty that introduction of a patent law of this kind could not be demanded at all by the Germans, since such demand did not fall under any of the provisions of the German-

French armistice terms. As is shown by the answer dated March 1941, which was submitted by me, of the Reich Ministry of Justice to the Bayer request, the Foreign office for these reasons engaged neither the Armistice Commission nor the French Government in this matter. So Rhone Poulenc, first of all, could have waited calmly to see whether the German Government really approached the French Government in the matter of introducing a patent law for pharmaceutical compositions. This was not the case, however.

It was without any German interference that later on, that is early in 1944, the French Government of its own accord did enact the patent law in question. This law continues to be in force even today. It answered to the very requests of the French pharmaceutical industry and to that of Rhone Poulenc too, as has been proven by many documents. Rhone Poulenc recognized itself that this lack of protection in the pharmaceutical field was contrary to the practice of all progressive countries of the Western world, and that it could not be maintained forever. Mann's pointing out that one had to reckon with a patent law cannot therefore be regarded for either objective or subjective reasons as an exertion of pressure on Rhone Poulenc. He was pointing at future facts or possibilities which is absolutely justified in economic life.

The same applies to Mann's other allusion, to the effect that some provisions regarding a certain indemnification for the time past must be expected to be included in the peace treaty to come, and that the French side some day would perhaps regret not having made use of this favorable opportunity for an agreement. Thus Mann merely referred to a regulation in the peace treaty to come, that is say to a regulation in the dim future by the two governments concerning the settlement of the damage done by the imitation of German patents and the expropriation of the trade mark "Aspirin", according to article 272 b of the Versailles Treaty. The evidence contains not a single word to the effect that Mann had, perhaps, told the French that they were going to be expropriated

by the provisions of the peace treaty, or their production to be reduced or any such things. Nothing of that kind, merely a supposition that the French side would perhaps regret one day not to have made use of that possibility for an agreement.

Now I ask: Was this idea of Mann's about a possible later remorse for the Frenchmen an inavertible compulsion to sign the contracts in order to ward off attacks on the legal claims and benefits established by Control Council Law No. 10 or on the existence of their enterprises? Had the Rhone Poulenc to sign the agreements with Bayer for reason of an allusion to possible protection by patents and to possible provisions of a peace treaty which was still rather nebulous? Does not the fact that a Frenchman, H. Faure Benulieu, was the go-between, a man whose national attitude the Prosecution did not challenge, who cannot be called a Quisling or Collaborator by anybody; does this fact not prove that Mann did not desire any infringement upon the freedom of action of the Rhone Poulenc? Nor is this altered by the fact that Mann, in the conference of 29 November 1940, allegedly said that he had to return his commission to the German authorities as a failure. First of all, it has not been proven conclusively that Mann made this remark actually. The witness Werner Schmitz has stated that the records do not give the exact truth with respect to this point, and that Mann according to his precise recollection, only said that he would have to inform the government about the result of his negotiations. But even if he did use this expression, it could never have been interpreted by the Rhone Poulenc as pressure. It was only a matter of course for Mann to report to the German authorities on the results of his discussions, just as the French did to their government (prosecution exh. No. 1272). That is nothing uncommon. I think, I know that an Allied businessman also has need of a special permit and must bring his projects in line with an authority if he wants to conclude private business in Germany. Mann's words did not amount to more than that, but on no account



did they mean that he intended to urge his government to take steps in order to force the Rhone Poulenc to give in. The following must also be taken into consideration:

When Rhone Poulenc rejected Mann's first plan of a joint sales association on 29 November 1940, Mann did not return his commission to the German authorities as a failure, but he desisted from the pursuit of his first plan and said frankly to the French that he fully appreciated the reasons for their rejection. This is disclosed by Mann's letter to Rhone Poulenc on 18 December 1940, his utterance of 29 November 1940 cannot be interpreted as pressure. Nor could the French see any pressure in Mann's words as Mann immediately agreed to their own suggestion of paying licenses and did not insist on the effectuation of his own plan of a sales association.

The negotiations concerning contract No. I were not definitely ended on 29 November 1940. In effect they were prolonged until 25 February 1941, the date of the final discussion of this contract, as is shown by the record of this day. (Mann Exhibit 227).

Moreover, memoranda were exchanged before the contract was signed, including the memorandum of 2 December 1940 which the Prosecution has submitted (Prosecution exhibit No. 2167). Furthermore, letters were exchanged with respect to the provisions of the contract. All these data do not contain an even hint at threats to the effect that the Rhone Poulenc would have to expect any measures whatsoever in case an agreement with Bayer could not be effected.

Neither can it be proven indirectly that Rhone Poulenc was under constraint. The Prosecution says that Mann suggested a sales association with a ratio of 51% to 49%. (Rhone Poulenc 49%) In order to avert this threat, the Rhone Poulenc, the Prosecution says, paid licenses. Later on, in contract No. III, Mann allegedly wanted a mutual participation in the stock capital to some extent. In order to avoid this danger, the Rhone Poulenc is said to have agreed to the establishment of

a joint sales association in the form of the Theraplix. In both cases, this procedure allegedly seemed to be the "lesser evil" to the Rhone Poulenc. Such an interpretation would mean that it must already be considered a threat to the Rhone Poulenc that Mann's proposed negotiations aimed at higher targets than the Rhone Poulenc was willing to concede. When two parties negotiate about an agreement and meet each other half-way, or if two parties in a court proceeding conclude an agreement in which each gives in to some extent, it is possible to say then that the outcome was the result of the applied pressure of raised demands? Each of the two parties, from their different angles, will call this

compromise the "lesser evil" in some way. The fact that one party attained less than it wanted and had to give less than it intended, cannot be an indication of the fact that one of the parties acted under pressure.

In addition, we still have to investigate whether the preamble of agreement I (Prosecution exhibit 1271), as the Prosecution asserts, offers any indication of the fact that the representatives of the Rhone Poulenc concluded the contract in order to avert a relevant evil which threatened their enterprise, their liberty and integrity. I cannot find anything like that to be the case. The opinion of Farben on the suspension of the pre-war contracts, as expressed in the preamble, cannot be construed as state of emergency the Rhone Poulenc to conclude a new agreement, in particular as the Rhone Poulenc, under these pre-war contracts had to pay licenses to Bayer after the abolition of which, according to the French Law it was permitted free of charge to imitate Bayer products without any permission of Farben even the covering letter which the Rhone Poulenc addressed to Bayer on 18 January and which the Prosecution calls the "strongest protest", is no proof of the fact that Mann exerted any pressure on the Rhone Poulenc. First of all, this letter clearly discloses that the words crossed out in the preamble, "in agreement with the German authorities", only referred to the invalidation of the former contracts.

The fact that Rhone Poulenc writes that Mann's remark about the opinion of the German authorities, in particular about the returning of the trade marks and about the breaking of the old contracts, was an important factor in their decision, can only relate to Mann's allusion to a planned patent protection in France and to a probable regulation in the future peace treaty, which was to be anticipated by a private economic agreement.

I should like to explain this with an example:

If an unprotected inventor tells the exploiter of his invention



that, according to the best of his information, a law is to be expected which will protect his invention, and grants an indemnification for the time elapsed; if then the inventor suggests to the exploiter he had better come to a more favorable understanding with him now — as for instance by giving him a share in the business, and if the other complies with this demand, does that mean that the agreement had been concluded under pressure or duress: This would not be the case even if he had taken steps for the establishment of such a law in order to protect his interests. Neither will this fact be affected by the circumstance that the agreement says that it has been concluded on the basis of the inventor's saying that a law covering this agreement is to be expected. It can be left undecided whether such an agreement would be void under civil law if the apprehension turns out to be unfounded and no such is made. This would only concern the civil side of law, but would not be a punishable fact.

Besides other correspondence of that time, the said letter from Rhone Poulenc of 18 January 1941 is a good example of the fact that the Rhone Poulenc was not compelled to sign the agreement. The passage contained therein: "we did not want to delay the signing of the agreement by correspondence" shows that the Rhone Poulenc was well aware of the possibility of protracting the negotiations and of averting the signing. Moreover, Mann's prior letter to the Rhone Poulenc of 9 January 1941 (Prosecution exhibit No. 1273) proves that the consent of the French authorities was necessary in order to make the agreement valid at all in accordance with the opinion of both parties to the agreement. Rhone Poulenc was to take steps itself to this effect. It was in the hands of Rhone Poulenc therefore to determinate whether and at what date the agreement was to become valid. This shows that it was absolutely unhampered in its decisions at that date. By delaying tactic, Rhone Poulenc would have been able therefore to prevent the conclusion of the agreement or to postpone it to a later

date. But it did nothing like that. It must be especially emphasized that Rhone Poulenc had nothing to fear if it delayed the transaction, especially as the main enterprises and the French government as well were located in the non-occupied territory. Nowhere in the files can it be found that Rhone Poulenc was exposed to constraint in order to procure this consent, nor that respective steps to this effect were taken by the German government.

What, then, prevented the French from taking a wait-and-see attitude? The key to the solution of this question is not hard to find. The documents give clear indications. There were two reasons:

The fact is that Rhone Poulenc had realized that as a "respectable firm" - to use their own expression - they could no longer expose themselves to the odium of exploiting foreign inventions, even though under a national law of 100 years standing it was not forbidden. It was the strong moral impulse to protect private property. Rhone Poulenc knew that the inventions did not come to Bayer just overnight, but were the result of long, hard and expensive work in the scientific laboratories of Farben.

The second important reason was this:

Mann's generous offer of collaboration in the pharmaceutical line was a powerful attraction for Rhone Poulenc, and so were the new products which were to be turned out by Bayer in the future with a corresponding giving up of the French market. Already in the course of the first conference with Faure Beaulieu, Rhone Poulenc had learnt that Mann was going to make such an offer. Faure Beaulieu had passed on Mann's original memorandum of 5 October 1940 to the executives of Rhone Poulenc for their perusal. The value of this offer of collaboration to Rhone Poulenc was extraordinarily significant. The great production capacity of the Bayer laboratories in regard to the invention of new and in many cases revolutionizing drugs and the prospect to participate in this business in some form or other on the basis of a contract agreement could not but be a great

attraction to Rhone Poulenc to come to terms with Bayer. Such collaboration was in keeping with the wish of Rhone Poulenc. This is proven by many letters written before the licence agreement was concluded. In a conference held on 19 November 1940, for instance, Rhone Poulenc stated that an agreement had been provided regarding the new products. (Mann Exhibit 207). Already in the conference of 29 November 1940 which resulted in Contract I this question was already under discussion. In that conference Rhone Poulenc even expressed the wish to extend the collaboration to lines other than pharmaceutical products, as for instance plant protection agents, plastics, resins and Buna. Rhone Poulenc's letter to Mann of 17 February 1941 (Mann Exhibit 266) bears out this wish. At the same time it conclusively refutes the curious contention of the Prosecution that a fight had taken place on that 29 November 1940 between Farbon and Rhone Poulenc, the outcome of which had been the licence agreement. How can any sane person think that a fight had taken place in that conference on 29 November 1940, when it was just in that meeting that Rhone Poulenc's own wish, namely, the extension of the collaboration to other spheres, was under discussion? How could Bayer possibly have opposed a wish which they had themselves, namely, the extension of collaboration?

Even before the signing of the first licence agreement, on 18 December, 1940, Mann drafted the outlines of Contract II concerning the exchange of scientific-technical experience and the mutual exchange of the new products, as it was finally formulated in the Leverkusen conference on 25/26 February 1941 simultaneously with the ratification of Contract I. Already in that meeting the joint utilization of the remaining stock of Bayer products in France and Bayer's definite relinquishment of the French market, as subsequently laid down in Theraplix-agreement came up for discussion. This meeting of 25/26 February 1941 between Rhone Poulenc and Bayer with its discussions and arrangements are conclusive proof of the



uniformity of the contracts aiming at a profitable economic collaboration.

The basis of these contracts for the time being, had to be the equality of the contracting parties in regard to the protection of patents. It was necessary that Rhone Poulenc should follow the international example and pay licenses for the utilization of the Bayer drugs.

Bayer could not just make a gift of their concessions, as for instance the unreserved exchange of the new products and the current scientific experience. On the other hand, Rhone Poulenc naturally endeavored to obtain as favorable conditions as possible and to avoid a participation by Bayer. At first Mann thought that a joint sales organization covering all pharmaceutical products was the right solution. However, he himself saw the force of Rhone Poulenc's counter-arguments and told them so quite frankly. Subsequently Mann suggested a 25% capital investment against exchange of Farben shares, based on the offer of the new products and relinquishment of the French market, and later on, when discussing the fate of the remaining Bayer stock in France, he suggested a certain participation in the pharmaceutical production of Rhone Poulenc. While on principle not opposing this suggestion, Rhone Poulenc argued that the time for an interlocking of capital had not yet come. Mann did not insist on it any further. The only outcome was a joint sales organization, Theraplix, Bayer bringing in their remaining stocks left after the conclusion of the license agreements I and II, and Rhone Poulenc nothing, and furthermore, Bayer relinquishing the French market altogether.

Was this joint sales organization forced on Rhone Poulenc, as the Prosecution tries to make out? Was Bayer to forego the French market without any compensation? Were any sacrifices imposed on Rhone Poulenc? Was not from Rhone Poulenc's point of view this joint sale of the remaining Bayer stock of 62 different products the lesser

evil as compared with the disadvantages to their business which they would have had to fear, if Bayer had remained in the French market, as they were by law entitled to do? All the more so, if Bayer had reverted to their pre-war plans of setting up their own production in France?

The documents prove that Rhone Poulenc showed strong initiative on its own part when this company was established, and frankly acknowledged the value of the remaining stock furnished by Bayers and also the advantage of Bayer's final withdrawal from the French market. This after a ll, was the reason that it had granted to Bayer a 51% share.

In this respect the Prosecution has in particular stressed the participation of Faure Beaulieu with 2% in the Theraplix and described him as a nominee of Farben. First I must ask, since when the appointment of a nominee in economic life has been pronounced as punishable, if the aim pursued does not constitute a criminal act? If the establishment and maintenance of a sales combine as such is not punishable, then the appointment of a trustee for the purchase and possession of 2% shares cannot be punishable either.

Apart from this, I have probed on the basis of documents that Mann's attempt to win Faure Beaulieu as trustee for 2% shares on the basis of the 51% shares agreed upon by Rhone Poulenc, was not successful. M. Faure Beaulieu finally made it clear on 27 April and 5 May 1942 that he was the agent for both partners and that his successor would have to be acceptable to Rhone Poulenc and to Farben. Thus Farben and Rhone Poulenc practically held equal shares in the Theraplix.

The contradictions which the Prosecution claims to be evident in Mann's interrogations pertaining to the matter in question, and without doubt be explained in view of the fact that he could not remember in detail the events which had taken place many years ago and had no records at hand. He had pointed out at that time to the Prosecution that the facts could be clarified thoroughly only on the

basis of records. The records were not given. These records state also the reasons why the German authorities were left in the belief that Bayer had 51% of the shares in the Theraplix. The organization of the NSDAP abroad, which participated in the approval of agreements with foreign enterprises, demanded a majority-share of Farben and German management. The tendentious statement of the Zeffi to the organization abroad was for this reason not corrected later on in order to avoid that the approval be revoked. This was confirmed by the witness Josef Schmits, who administrated Bayer's share in the Theraplix. As far as the payment of 1 million French francs to M. Faure Beaulieu is concerned, I was able to prove by documentary evidence that this had nothing to do with Faure Beaulieu's partnership. M. Faure Beaulieu received this sum, in acknowledgement of his collaboration in the negotiations (Mann Exhibit No. 273). There is no evidence that this payment to M. Faure Beaulieu was subject to any conditions, as for instance the exercise of his voting right or his activity for the I. G. Farben.

What was the economic result of the contract and the collaboration for the Rhone Poulenc?

Bayer withdrew his pharmaceutical products completely from the French market, including the colonies, protectorates and mandates.

Bayer relinquished for all time its business in refined chemicals in the French sphere of interest in favor of Rhone Poulenc.

Bayer granted Rhone Poulenc for a period of 50 years the absolute title of the exploitation of all the newly developed Bayer products in the future.

Bayer undertook to keep Rhone Poulenc currently informed on all scientific technical progress in the field of research in medicines.

Bayer finally transferred the sale of all its stocks and supplies together with the process formulae to the Theraplix in which Rhone Poulenc had half an interest and the management of which was in the



hands of the son-in-law of the President of Rhone Poulenc.

And what was the collateral offer on the part of Rhone Poulenc?

Rhone Poulenc paid licenses for products the priority of which was recognized to be with Bayer. These licenses were not to be paid by any chance for the past but for the future and for a length of time during which a drug is normally on the market. They were independent of the turnover which Rhone Poulenc derived from these drugs. Is such a payment for license not in international usage? Is the acceptance of licenses for the current exploitation of a discovery and of a scientific achievement a crime or even an immoral action?

Especially then, when the fee is proportionate to the profits which accrue from the exploitation? In the trial before the French civil court it is stated expressly that Rhone Poulenc derived "considerable profits" from the contract, and that Bayer's withdrawal from the aspirin business and comprehensive relinquishment of the French market brought great advantages to Rhone Poulenc, which still will continue in the future. The table drawn up by the witness Werner Schmitz on the basis of existing data, which could not be contested in the cross-examination by the Prosecution, closes already after 3 years of collaboration and with the payments of licenses figured in with a balance of 3 million francs to the credit of Rhone Poulenc.

And this truly favorable collaboration Rhone Poulenc attained without any investment of capital on the part of Farben in its enterprise, without any interference with its sovereignty and its sphere of interest. Where did Farben gain control of the French pharmaceutical industry? Where did it make the production of Rhone Poulenc a component part of the Farben plants? Where was the independence of the French industry destroyed, as to Indictment claims in providing a proof for its charge against Mann?

I have submitted numerous original letters which confirm the fact that Rhone Poulenc more than welcomed the collaboration with Bayer, and that the agreements were observed by both parties in

a spirit of sincerity. According to these statements by Rhone Poulenc itself, Mann had to be confirmed in his conviction that the contracts with Rhone Poulenc contained nothing illegal or unlawful.

I shall add: Even if a single Frenchman had been exerted to pressure, don't you believe, Your Honors, that it would have been possible for a Frenchman to appear here in Nurnberg to describe to you the very facts which he considered to have constituted a pressure? And if the Prosecution wants to tear up the entire contracts in order to make it appear that the first contract was particularly culpable, then I want to describe the uniformity of the three contracts which all go to the same effect. It was proven that Bayer withdrew from the French market. The pharmaceutical department of Bayer in Paris was liquidated. Bayer obligated itself for a period of fifty years to waive the French market.

I will repeat: I have proven that Bayer obligated itself to withdraw unreservedly from the French market with its French business. The pharmaceutical department of Bayer in Paris was liquidated. Bayer undertook for a period of fifty years to withdraw from the French market in all the French spheres of interest. The withdrawal was concluded for the pharmaceuticals upon an unlimited period of time. The Bayer cross, the trade mark introduced in seventy-five countries, was withdrawn for the case of France, and all this was done at a time when Mann could have carried out this business in France. But, instead of doing this, Mann waived or withdrew from carrying all this out. Therefore, the entire transaction cannot be understood only as being an economic uniformity. The three contracts cannot be taken separately as individual contracts, but they must be considered to belong close together. They form a uniform whole as far as economic matters are concerned, and with the withdrawal of Bayer from the pharma business was a uniform and indivisible action.

Every contract is the complement of the other contracts, and this shows clearly that the contracts were not concluded subsequent to each other but that the contract that follows the other was concluded at a time when the previous one was still being discussed. That shows clearly the uniformity of the entire number of contracts.



I now continue on page 26.

I shall be brief with regard to the legal evaluation. The essential viewpoints have been presented by my colleague Dr. SIEMERS. Only the following may be mentioned: The main plants of the Rhone Poulenc together with management lay in the unoccupied French territory, as the Prosecution itself states under number 112. For that reason the Hague Regulations governing Land Warfare have no application. Moreover, According to Control Council Law No. 10 the action must be directed against specific legal claims and benefits, person, life, or property. This is not the case here. Moreover, there is no proof of pressure by means of which personal freedom of persons or the property plants of Rhone Poulenc were affected disadvantageously. The last thing to be examined is the claim of the Prosecution that the atmosphere of general intimidation such as is caused by the presence of the armed might of the conqueror or the department of the military government, had been exploited. In this connection I might point to the following: The despair after the Capitulation was visibly less in France than it was in Germany after the Collapse. In France existed a large unoccupied territory. Germany, on the other hand, is completely occupied. In France there were at the time flowering fields and undamaged residential districts and industries. Germany is laid waste for the greater part. France at the present time possessed an Armistice agreement, Germany, on the other hand, after a complete collapse, not even occupation statutes. Nevertheless, since the complete occupation of the country, agreements have been concluded with foreign businessmen, even with the occupation powers. Thus, for example, the great plants of the former Farben have concluded contracts for dyestuffs in the amounts of several millions of Reichsmark with foreign firms. No one would want to claim that these contracts were concluded involuntarily, concluded under duress because they were drawn up in an occupied country, during a time of the most abject economic depression, by

German business-men who, due to the total situation, are most certainly in a greater state of despair regarding the future than the men of the Rhone Poulenc were in at that time. If these contracts were to be regarded as concluded under duress, then contracts could not be concluded at all in any occupied countries. Whether these contracts are to be declared as voluntary or concluded under duress, can be decided by applying the yard-stick of their economic success. If this result is an economically rational one, then one can assume that these contracts would also have been concluded by the parties concerned if the latter did not live in an occupied country. It has been proven that the economic final result of the contract between Farben and Rhone Poulenc was economically advantageous to both parties, for Rhone Poulenc even of greater advantage. On this basis, too, the contract is also a voluntarily concluded one. Thus an act of plunder or spoliation is not present in the Rhone Poulenc case.

In Court III of the Indictment the name MANN was mentioned in connection with medical experiments. In this connection I refer to the statements of the defense counsel for Professor HOERLEIN. However, let this be emphasized strongly: The businessman MANN did not have anything to do with all this. Professor HOERLEIN himself and the witness Dr. LUECKERS have declared this unequivocally. MANN did not have any connections with Dr. VETTER. VETTER was an employee of the Bayer sales combine, that was all! The scientific department headed by Dr. PERTENS was under MANN'S direction; however, only with respect to problems of the scientific advertising. Only after a drug was ready for sale, that this, after all the necessary versuche had been finally concluded, only then the Bayer business executives occupied themselves with the resulting business problems. Thus responsibility for the versuche cannot be imputed to MANN. MANN had nothing to do with the Lanberg-Institute. It was joined to Bayer only in an organizational way and only with regard to purely commercial problems.

MANN never learned anything about the versuche nor did he have anything to do with labor problems. This was due to the nature of his position. That he once commented in the Vorstand on a lecture by SAUCKEL does not prove anything. He came to this lecture quite by chance. Since the lecture contained some interesting facts, MANN considered himself duty-bound to briefly inform his colleagues of the Vorstand regarding them.

(Recess was taken)



AFTERNOON SESSION

(The Tribunal reconvened at 1330 hours, 8 June 1948).

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Dr. Berndt, it would appear that you may have some considerable difficulty in limiting your oral presentation to the manuscript that you have here. I may say that if you conclude to omit the reading of part of your manuscript you will not be prejudiced by it. We have the manuscript and, of course, will have occasion to study it very critically. Anyway, as much as you can keep within the limitations of time, it will be appreciated by the Tribunal. You may go along.

DR. BERNDT (Counsel for the defendant Mann): Mr. President, may I ask how much time I am still entitled to?

THE PRESIDENT: I think somewhere between ten and fifteen minutes, as I remember.

DR. BERNDT: I had been granted one hour and twenty minutes. That is what I was officially told. In the case of ter Meer I saved fifteen minutes, but --

THE PRESIDENT: Go ahead.

DR. BERNDT: I shall nevertheless comply with the request of the Tribunal. I had been discussing the Verwaltungsausschuss and had observed that we were on page 32 of the Supplement.

This Verwaltungsausschuss was not based on law or on the charter but on syndicate contract. The consequence was that it was not an organ of the company in a legal sense. Nor was it ever intended as such but it served to form the external framework for the coordination of the company interests. The Verwaltungsausschuss had, therefore, no influence on the management on legal grounds. The management of the Degesch was the sole and exclusive organ which decided on business affairs without being hampered in any way in these tasks by the Verwaltungsausschuss. This is confirmed by the fact

that in the 14 years of existence it never interfered in the business management of the Degesch and, on the other hand, the business management never informed the Verwaltungsausschuss of internal matters even if they were of significance -- for example, chamber gassing.

Now it is maintained that Mann, as chairman of the Verwaltungsausschuss, had direct influence on the business management. This argumentation proves futile if one considers that the Verwaltungsausschuss as such had no influence on the business management than, of course, a member of this committee could not have any influence even if it was the chairman. This argument, therefore, collapses. Besides, there was no reason for Mann to interfere with the business management for the managing company was the Degussa with whom it had been agreed that it would manage the business and the other associates never encroached upon this right in any way.

Now the prosecution says very well, that from 1930 to 1940 Mann was business manager. This is true but, as I say, Mann was not the business manager. His position in the business management was severely formal, and this can easily be explained. The Vorstand member, Herr Schlosser, of the Degussa was at that time business manager of the Degesch.

I am improvising.

And just as a Vorstand member of the Degussa was in the business management of the Degesch, a Vorstand member of I.G. Farben was also to be there and Mann was the person chosen because he was in charge of the department of insecticides, a department which was under Bayer. This was similar --

I believe I must read from the manuscript after all.

This is a similar situation -- I am on page 34 at the bottom -- to the situation in another firm, Chemical firm Homburg, where the management was in the hands of Farben, the

chairmanship of the Aufsichtsrat was Schlosser — and in Degesch it was the other way around.

And then it is definitely established that Mann never participated in the business management at all. Not a single time did Mann enter the offices of Degesch. Mann did not know a single one of the employees. Mann had never signed a single business letter or anything of the kind. In short, there has not been brought forth the slightest proof that Mann ever acted in any way as business manager. The Prosecution has noticed that, too. Thereupon they brought up a new assertion — namely, that Mann took active interest in the business but no proof of this was brought forth. All the correspondence all of which was found in Leverkusen, was examined by the prosecution and not a single piece of evidence of this allegation was found. Mann himself was not under obligations to take an interest in the business affairs. On what basis was he to have such an obligation? As a representative of Farben, as a representative of the Verwaltungsausschuss, it was forbidden to interfere in the business. He did not have any duty because the Degesch was perhaps an enterprise which was not well managed. Degesch had existed for decades it had been managed very well and the people who worked for Degesch are under especially strict government control. This is a high degree of guaranty for the fact that Degesch business is well conducted.

Now the prosecution says Mann was obliged to take an interest in the business because he heard something about Zyklon deliveries. The prosecution points out that Zyklon deliveries to Auschwitz had reached quite a high extent in 1942 and also since 1943 non-irritating Zyklon had been supplied to certain SS offices and, finally, that Zyklon deliveries were not channeled through the army medical depot.



First of all, this kind of circumstantial evidence is not conclusive for, even if all those three factors had been known, it still does not prove that the fact of misuse of Zyclon by the SS was also known. The members of the Verwaltungsausschuss did not know at all the fact stated by the prosecution. Neither their position as members of the Verwaltungsausschuss nor their participation in company meetings, nor the yearly business reports submitted to them, gave them the opportunity to inform themselves about the details of the business affairs of Degesch. The only thing that they knew was the business reports.

Now the former business manager of Degesch, Dr. Peters, testified here that in spite of the fact that he knew the details of the business management, he did not know about the use of Zyclon against human beings. Peters himself was the only person who knew anything about this business. He told us quite frankly here that he learned from Gerstein under strict secrecy of a certain limited misuse and Peters also told us that he did not tell anyone, even his closest associates much less any of the defendants, especially the three mentioned, anything about it. This testimony of Peters is absolutely credible because the man who admitted that he knew something about it would certainly have tried to exonerate himself if he got rid of the responsibility of his knowledge.

The prosecution has further attempted to prove that, independent of his position as chairman of the Verwaltungsausschuss, Mann had a possibility to get information of misuse of Zyclon. But that the prosecution was not able to prove. The only thing that the members of the Verwaltungsausschuss knew about Zyclon was the information given in the business reports and the monthly turnover reports. This reveals only one fact -- namely, the general increase from 180 tons in 1939 to 411 tons in 1943.

Is this turnover increase a symptom to attract attention? Have not all of us observed during the war that all production connected with the very waging of the war, even if remotely, attained a multiple of their peacetime sales? Was that not the case in all countries? Was that not the case in America just in Europe? Did not Zyklon obtain quite a special importance through the war as a means for exterminating lice, as a remedy against the dreadful danger of typhus? It is really absurd to connect the increase of the Zyklon sales with the gasings in Auschwitz. It must be taken into consideration, moreover, that the deliveries to Auschwitz amount to 19 tons in total and, therefore, are hardly worth mentioning in the fact of the increase of sales which amounted to several hundred tons. In addition, it must be taken into consideration that the consumption in Auschwitz which has never come to the knowledge of the accused members of the Verwaltungsausschuss -- which fact has been clearly proven by the hearing of evidence -- cannot have served exclusively the purposes of gassing of human beings but was primarily used for the purpose of disinfecting rooms and delousing clothes.

An affidavit of expert witness, Dr. Rauscher, has been presented to the Court which proves how negligible the amount of Zyklon is which is sufficient for the killing of warm-blooded living beings.

It is completely impossible, even if we subject the sales movement to the most careful scrutiny, to conclude that sales of Zyklon were misused for criminal purposes.

increase was bound to appear as an absolutely natural phenomenon, if compared with the development of the sales abroad which is also obvious from the trade reports. In spite of the fact that many customer countries were not available, the development of the Zyklon sales abroad shows an even more pronounced increase than the domestic sales. Being the head of the sales combine of Bayer which had control of the department for insecticides, Mann of course had knowledge of the fact that the sales of the Farben insecticides had increased enormously on account of the war, an increase which partly the increase of Zyklon sales. This does not only apply to "Lauseto", but also to "Diametan" which was used in similar fields as Zyklon. None of the business reports states directly that Zyklon was delivered to SS agencies. This can only be concluded indirectly from the fact that concentration camps and other agencies of the SS are mentioned in some of the business reports for having received Degesch de-lousing chambers. It may be inferred from this fact that the said SS-agencies required Zyklon to some extent. But it is impossible to conclude from these notes in the business reports to what extent the SS agencies received Zyklon. Not one of the members of the Verwaltungsausschuss — and no one else who read the business reports therefore, was informed of the amount of the Zyklon deliveries to Auschwitz concentration camp or to other concentration camps. They had only a general knowledge of the development of sales, which knowledge could not arouse suspicion in any way and could not point to criminal deeds as the prosecution wants us to believe.

The prosecution now points to the fact that the Zyklon sales slumped, and increased again in 1942. The prosecution avers that this increase of 1942 was in connection with the killings in Auschwitz. This assertion is absolutely erroneous. The business report for 1941 contains the only possibly explanation of this temporary slump: the conclusion of the fighting activities in the West had resulted in a reduction of the requirements there, and the new demands which resulted from the war



in the East had not yet taken effect.

As I have already proved, the big Zyklon deliveries to Auschwitz were quite as unknown to the members of the Verwaltungsausschuss -- as the direct deliveries of non-irritant Zyklon to SS-agencies. But even if somebody had been aware of these facts, this would not yet permit the conclusion that this man was bound to have thought of the possibility that the Zyklon was to serve criminal purposes. The large deliveries to Auschwitz find their absolutely natural explanation in the fact that many people came to Auschwitz from the strongly lice-infested countries of the East and South-East which increased the danger of typhus infections. The omission of irritants are easily and obviously explained with difficulties in the production, and these difficulties, beginning in May, 1944, actually made the general production of non-irritant Zyklon necessary. In this connection it must be emphasized that neither the patent nor the law prohibit the production of Zyklon without irritants. Moreover, non-irritant Zyklon had already been prepared at an earlier time for the purposes of disinfecting foodstuffs and table luxuries. Trade journals quite openly report about the experience made with non-irritant Zyklon. From these facts one cannot conclude anything suspicious.

In this connection I may point out that the arrest order for the deputy business manager of Degesch and the procurist of this company was rescinded by the court in Frankfurt. This makes it clear, I believe that the business manager and procurist had full insight into the business of the Degesch and I imagine the prosecution believes that the knowledge of the events mentioned in Degesch can suppose the suspicion relating to the misuse of Zyklon only in connection with the knowledge of the Auschwitz happenings derived from general sources. But none of the defendants, specifically the three whom I represent, have been proved to have such knowledge. None of them had insight into the business transactions. None of them have been proved to have knowledge of

the details stated by the prosecution. None of them have been proved to have heard definite rumors of the gassing of human beings in Auschwitz.

The prosecution is arguing from the fully false presupposition that knowledge of these events in concentration camps, specifically events in Auschwitz, were generally known in Germany. This is absolutely incorrect. It was an infinitesimal small group of persons and either accidents or personal sources brought forth such information and it is only this small circle who had knowledge of the gasings in concentration camp Auschwitz. It may be that certain foreign quarters made efforts to inform the German people of these occurrences but these efforts led to no results. There was in Nazi-controlled Germany a very tight system of information control effectively supplemented by a whispering campaign which was secretly directed and which really succeeded in rendering incredible all rumors on Germany coming from abroad. The experiences from World War I and from the decade preceding World War II filled all people in Germany with the utmost distrust towards all news having the merest appearance of being propaganda news published within the framework of psychological warfare.

Just how little the fact of the Auschwitz gasings was known even among the victims directly affected, is best proven by the fact that at a time when the evacuation of the Bulgarian Jews was about to start, none of the Jewish acquaintances of the witness Rauscher reckoned with the possibility of being gassed in an extermination camp. Nor could the individual actions carried out in connection with the persecution of the Jews in Germany, as far as they were known, convey any knowledge of the Auschwitz occurrences.

The Jews were evacuated from Germany, but the only thing known or suspected was that they were going to be sent to the east. And this fact was explained by many in the assumption that ghettos or reservations were supposed to be set up for the Jews in the East. This

assumption found its explanation in a speech made by Hitler on 6 October 1939, in which he stated explicitly that in connection with the separation of nationalities in the East, which had become possible as a result of the Polish campaign, a solution of the Jewish problem had also become possible. This statement was made by Hitler in the same Reichstag speech in which he talked about large settlements in the East. The idea of a mass-extermination of thousands or millions of people in a camp specially designated for this purpose, is, in any case, so inconceivable to a person of normal emotions, that the vast majority did not even think of it and, even if it got wind of such things by way of rumor, rejected them as it simply could not believe them.

Now, the Prosecution claims that, since the I.G. built a plant in Auschwitz, the members of the Vorstand of the I.G. who are indicted were bound to have heard something about the conditions in the Auschwitz concentration camp. In this connection, it must first of all be stated that the 3 Vorstand members concerned here, Mann, Hoerlein and Wurster never were in Auschwitz; and that they were not connected with Auschwitz in any other way either. And if the Prosecution assumes that the defendants had somehow been informed of the happenings in the Auschwitz concentration camp, this is a completely unsubstantiated supposition.

In no instance has this been proved, and all the Vorstand members, questioned on this in the witness stand, declared that they had no knowledge or only very limited knowledge of the happenings in the Auschwitz concentration camp. Not one of them stated that he had reported anything to the members of the Verwaltungsausschuss of the Dögesch. It may be true that in Auschwitz and vicinity all sorts of rumors concerning the happenings in the KZ circulated. However, none of these rumors reached the ears of the three defendants. They were living more 1000 kilometres away from the Auschwitz, and had no contact with the Auschwitz milieu. They were no more able to hear anything about the above-mentioned events than the average German. It was especially the



fact that the defendants, as Vorstand members of the I.G., belonged to a higher social level, which kept them out of touch with the broad masses of the people, thereby reducing their chance of accidentally hearing anything about the goings-on at Auschwitz. At any rate, it was not proved during the trial that the named defendants knew anything about the atrocities at Auschwitz.

Thus it is proved that the I.G. all the defendants, and in particular the three defendants had nothing at all to do with these terrible Zyklon murders.

At the beginning of my elucidations on this count, I explained to you why the Prosecution clung so stubbornly to this charge in connection with Degesch. The Prosecution itself realized that it could not prove that, as stated in the indictment, the I.G. had produced poison gas there which was used for mass murders. Therefore, the Prosecution had recourse to the I.G.'s participation in the Degesch.

This fact, too, has been completely cleared up with the result that none of the defendants can be held responsible on this point. Thus, I have taken care of the last charge against my client, Mann. For the rest, I refer to the interrogation of Mann, in which, I believe, I have presented all that was necessary, and to my closing brief with supplemental material and certain legal opinions.

Your Honors, if you go over all my statements, you will understand that I am justified in asking for a verdict of not guilty for my client Mann. Not only is this verdict just, but also morally justified. You are judging Mann as a human being. I have known him for a long time, even before this trial. But during such a trial, one gets to know a person most thoroughly. He lays bare his innermost feelings. I have looked into this man, into all folds of his mind, and I have come to realize that Mann is what we call a "a decent fellow".

THE PRESIDENT: We will hear from Dr. Henze on behalf of the defendant Oster.

DR HENZE (Counsel for the defendant Oster: Your Honors!

In the closing Brief which I have submitted to the Tribunal on behalf of my client Dr. Heinrich Oster I have undertaken an appraisal of the evidence of the Prosecution and my own evidence, and moreover have indicated the problems which in my opinion are of importance for finding the judgment. Essentially it is a question of the responsibility which is to be ascribed to my client and his guilt in the events adducted by the Prosecution.

The points which I have to analyze more closely are the following:

1.) Did Dr. Oster by his conduct become a causal agent in the crime committed by Hitler of beginning a war of aggression? The Prosecution not only attempts to hold the individual defendants responsible for what they did themselves but also imposes on them the responsibility for the entire business activity of the I. G., independently of the fact of who brought about the individual measures in detail through his own action. In contradiction to this it must be stated that such a summary way of looking at things is contrary to all recognized laws of causality. One must adhere to the view that this responsibility can only be confirmed if the agent has fulfilled the necessary requirements for a specific result by his own action. If, in my comprehensive appraisal I consider the evidence which the Prosecution has advanced regarding active conduct on the part of my client, I necessarily come to the conclusion that his own conduct can in no way be described as causal, and more specifically causal with reference to the result which occurred, the war of aggression which was begun in 1939. In the tremendous mass of documents I have found only a few exhibits which show any act by my client, in which connection I do not mean to say that these actions are causal with the reference to the war of aggression. If one makes the attempt and tries to explain

8 June 1948-1-ED-17-2-Primeau (vonSchon)  
Court VI, Case VI

away the conduct of my client, then no further argument is required to come to the conclusion that the political developments in Germany would not have proceeded differently in any respect and that any inactivity on the part of my client would not have had the possible result that the war would not have begun. In this connection I can compare the contribution which my client made towards starting the war with the activity of any farmer who has increased agricultural production by utilizing the nitrogen sold by my client's organization, the Nitrogen Syndicate, and thereby also contributed towards making it possible to wage war. It is not necessary for me to linger over this point any longer, as it is obviously not the theory of the Prosecution that it can prove a guilty act by my client in this way. The theory of the Prosecution goes ever farther, rather is it to the effect that every single defendant is not only responsible for what he did himself but that responsibility is also imposed on him for that which happened within the I. G. in the last decade before the beginning of the war without his own active participation. In order to extend the requirements of causality so far and to regard what happened as of significance in criminal law for all defendants, it is necessary to prove that the individual defendant, who did not participate in these things by his own positive action, was under a responsibility of positive action. For the sake of the clarity of the argument it might be pointed out very unequivocally that it would then be a question of so-called crime of omission in a case where according to recognized rules there existed the possibility and the obligation of preventing the criminal result. In these cases, therefore, it would not be a question of my client having rendered himself liable to punishment by a positive action but rather by an omission. That means that he was obliged to perform some positive act. According to recognized principles of criminal law, causality through omission can only be confirmed if there existed an obligation act. One might ask wherein this obligation can be seen.



The Prosecution considers this obligation to exist by virtue of the fact that my client was a member of the Vorstand of the I. G. and as such was responsible for I. G.'s activity. But in what respect can an obligation on the part of a Vorstand member be seen? The Prosecution desires to extend the idea of responsibility further in such a way that all defendants are responsible for everything which happened within the I. G. regardless of whether it occurred in their working sphere or in that of their colleagues. This would mean, for example, that one would require my client for example, to interfere in the working sphere of his colleagues and, if occasion should warrant, to hinder their actions in case of punishable action should be involved. The Prosecution wants to impose this obligation on the individual defendants and my client because they were members of the Vorstand of the I. G. It requires, therefore, a mutual supervision. One might ask whether the fact of being a member of the Vorstand of an industrial enterprise obligates one to do this. For the purpose of examining this question I might point out beforehand that the connection which Vorstand members of an industrial enterprise have with one another is connection of civil law. This connection is derived from the fact that various men have come together for a common purpose. This purpose is to manage this enterprise in common. The responsibility which these men have is primarily a responsibility towards those persons whose interests they represent. These are the stockholders of the company with whose money they are working. With respect to them the responsibility is a common one, since it rests on the same legal basis, namely. On the commission which has been given them of managing the business of the enterprise. That the responsibility is exclusively one under civil law is shown by the nature of the affair. That in the case of a large enterprise it is not an exclusive and absolute one is shown by the fact that it would go beyond the powers of the individual to acquire knowledge of everything happening in the company, to influence it and, therefore, to be responsible for it. I do not intend to make any further comments on

this point, since I am in a position to refer to the expert opinion which has been prepared by the attorney at law, Dr. Walter Schmidt, the co-author of one of the best known commentaries on the Commercial Code. This expert opinion has been submitted to the Tribunal. I shall quote the following sentences from it:

"In so far as a Vorstand member carried out business measures in his sphere of tasks the other Vorstand members were free of responsibility."

"With respect to their colleagues in the other branches of the business they were only subject to the general duty of supervision, that is, so long as their colleagues could be considered trustworthy, they were freed from any special duty of investigation and examination".

The decisive question here is whether these persons also have a joint criminal responsibility, merely by virtue of the fact that together they constitute the Vorstand of the company. This might be conceivable in specially situated cases if the entire Vorstand should lend itself by a common plan to an action which on the one hand is of importance in criminal law, on the other hand stands in conjunction with their activity as Vorstand members because it injures the interests of the stockholders with whose money they are working. The fact that the defendants are members of the executive staff of an industrial enterprise can further be of importance if a criminal act is involved by which the interests of the persons working in the enterprise are prejudiced. In such cases it would be a question of the violation of the duties which the State has imposed in the interests of the well-being of the economically weaker members of the enterprise, the workers. German criminal law recognizes certain offenses by employers, for example, such offenses as are named in the German Trade Regulations. In all such cases, however, it is required that other special circumstances be present in addition to the fact of being head of the enterprise in order to justify a conviction. Thus, for example, in the case of a trial brought by subordinates the German Supreme Court reichsgericht adopted the point of view that there is, to be sure, an obligation to exercise

care in assigning persons to work, but that the relationship of employer by itself does not create a duty of inspection and supervision, but only if special circumstances are present and to such an extent as is possible under the circumstances.



It is of course also imaginable that members of the Vorstand of a company join for an activity which is criminal, but is not detrimental to the interests of their employers, the stockholders, nor of their subordinates, the workers and salaried employees. In this case it would involve all offenses against the general provisions of criminal law. In such a case the criminal action has no inner connection with being a member of the Vorstand of an industrial enterprise. Then it would be necessary that the circumstances requiring punishment be present for every individual member of the Vorstand in his own person. The fact alone that they are members of the Vorstand cannot be taken as a basis for the theory that there is a common intent, a common responsibility. On the contrary, it must give rise to considerable doubts if it is alleged that just such a circle of persons joined for an action which is beyond their proper sphere of activity. I mean that particularly clear and unambiguous proof must be produced and that circumstantial evidence is inadmissible. It must be proved that these particular persons had a common goal in mind. There must be particular facts which have to be examined and confirmed for every individual person. One cannot draw the conclusion that every person involved is responsible or that a presumption of responsibility speaks against him, because these persons were joined by chance or by other circumstances in the management of an industrial enterprise. In this connection I should like to refer to the statements made by Professor Metzger in his expert opinion dated 26 April 1948, with regard to question 3 which was submitted to the High Tribunal as Document Knieriem No. 40, Defense Exhibit 281.

The Prosecution did not produce this evidence of a specific responsibility. It did not even try to do so since such an attempt would have clearly shown that the individual facts which it had gathered for the basis of its indictment would in most cases only apply to individual defendants. In order to be on the whole in a position to erect the edifice existing

in their imagination, the Prosecution has rather assumed that the actions of every individual defendant were or must have been known to all the others. Moreover, it set up the theory that the defendants were obliged to exercise mutual supervision. With regard to this it must first of all be stated that only a purpose fully acting person can be a participant in such a crime. An offense against the obligation of supervision constitutes only a crime of omission. In order to be able to consider an offense against the obligation of supervision as a wilful crime, it would be necessary to prove that a member of the Vorstand wilfully violated his obligation to supervise in carrying out his will to participate in the commission of the crime. This was not even alleged by the Prosecution in the case of my client. For the rest, the Prosecution took the actual situation by no means into account. For one thing, it overlooked that in such an enterprise a division of responsibility is absolutely necessary in order to make this enterprise fit for operation at all. It furthermore overlooked that the individual person did not have a specialized knowledge of the individual business transactions, if these did not belong to the field in which he specialized. In practice, in the management of I.G. it was necessary to divide the spheres of activity and to institute various sub-committees (Fachausschuesse), in order to be able to develop a reasonable management at all. Otherwise a terrible confusion would have resulted. Furthermore, it must be taken into consideration that it was not all necessary that the individual members of the management of the enterprise were exactly informed of the happenings in the other departments since complete conformity of business practices was not required either for production or for sales. It was not even necessary that for instance, the salesman for nitrogen was exactly informed of the sales practices of the sales department for photographic products. The customers with whom the two departments had to deal were different, just as were the customary sales con-

ditions of the two branches. Probably it was of greater importance for the salesman of photographic articles to conform with the sales practices of the competition than with those of his colleagues who were selling dyestuffs. The same can be said of the various fields of production. A relation between the individual products existed, if at all, only with regard to raw material, but not with regard to the final products. The methods and requirements of production were likewise different. There is no reason why such an enterprise should be organized in a different way than was dictated by the actual requirements.

It is evident that the actual requirements led to decentralization. On the one hand this was already conditioned by the historical development of the individual firms which later on joined to form the IG. To make reference to this does not mean that an attempt is being made to withdraw from responsibility. It means that the actual conditions are being taken into account. It cannot be seen anywhere that there was an obligation to do otherwise. It would be the duty of the Prosecution to prove such an obligation. In order to forestall this justified argument, the statement of the defendants that "I have had no knowledge of this", which was said to be a probable answer, was intentionally discredited as questionable in this trial even before the beginning of the taking of the evidence, for the purpose of obscuring the facts. An attempt has been made to construe this beforehand as an evasion of responsibility. For a reasonable consideration of the facts as they really exist in such an enterprise, such an obscuring of the facts should be avoided and one should simply ask: "Must I have had knowledge of this or that matter?" It is true, the Prosecution has contested that the question can be answered in the negative in all those cases in which the person's own field was not concerned. However, it did not make reference to any fact from which a le-



gally founded presumption could be derived that the course dictated by the actual circumstances was unlawful.

In this connection, I should like to refer to the statements made by the former member of the Vorstand of the I.G., Dr. Pister, concerning the historical development and the working methods of the Vorstand of the IG. The description he gave is so realistic that it cannot be disregarded. The conditions existing in the IG can perhaps be compared with those existing in a number of independent enterprises which finally were joined in a holding company. In such a case one would not think of making the heads of the individual companies responsible for the individual occurrences in the other companies, for the simple reason that all of them were joined in a holding company. It is not evident for what reasons one can, under similar circumstances, arrive at a different judgment only because a different legal construction has been chosen. The judgment of such questions must be based on the given facts. One cannot, as the Prosecution wants to do, force the facts into a scheme that exists only in its mind, which was only chosen for the purpose of supporting the unrealistic theory of the Prosecution.

I only want to show with the above considerations that in the Present case the common external characteristic of the defendants, i.e. that they had been members of the Vorstand of the IG, is no evidence for a common responsibility. On the contrary, especially in a case like this, the individual responsibility of every person involved must be proven if one wants to maintain the theory that all of them are responsible.

The crimes alleged here are not crimes as defined in common law, but offenses against agreements subject to international law. In first line, such offenses are committed by persons who govern the State. Such a crime has nothing to do with the aims of a business enterprise. It is a question to what extent you can expect a member of the Vorstand of such an enter-

prise to take action if he believes he has found out that one of his colleagues, in accord with the political leaders of his own country, assists them in their efforts which aim at a criminal war of aggression. This would mean expecting the individual to supervise and influence not only the business activity of his colleagues, but also their political attitude. If one should claim that the individual has an obligation to interfere, then the individual would not be in a position to justify himself before the courts of his own country with the argument that he wanted to put the principles of international law into effect with his activity, which is in opposition to his own government. This would moreover have meant for him that he would have incurred the risk of endangering himself, since he would have opposed the line of the Reich government. I do not wish to admit by this that I consider the theory of the Prosecution correct when I make these deliberations. I only want to prove the absurdity of its theory by stressing that even if such facts had existed, it could not have been expected of the individual defendant that he oppose the general policies of the Third Reich, by sabotaging measures which were in accordance with them. For the case that this construction, which is far removed from the actual situation, were to be considered correct, I should have to claim for my client that he was under duress.

DR. HEMKE: Mr. President, may I remark at this point that I believe the translation is incorrect. "He was in a state of necessity" should be read instead of "He was under press".

It could not have been expected of him to take any action. This would have resulted for him in being taken to account because of sabotage against National Socialist policies. This would have meant, even according to the Prosecution's statements concerning the terroristic regime of the Third Reich, an endangering of life and limb.

, According to generally adopted principles such an interference could only be expected of him if it had some chance of success. I beg to stress that omission is only relevant within the meaning of criminal law if the accused person had the possibility of preventing a criminal consequence by his action. In my opinion it is unnecessary to prove that the policies of the national socialist government would not have changed in anyway if an individual person or several had opposed them in the manner required by the theory of the Prosecution. In reality nothing would have changed.

The second problem I have to deal with is whether in the case of my client the conditions of criminal intent are present.



The Prosecution devotes many pages of its Trial Brief to extensive arguments in regard to the question of the subjective elements in the case. They acknowledge thereby the recognized legal principle that the question of the subjective element is of essential importance in deciding the existence of guilt or innocence. It is one of the requisites of the subjective element of a crime that a defendant performed his action deliberately and willfully.

The Prosecution has refrained from producing a proof of this guilt in the case of each individual document in this case, namely, that they by their action wilfully and deliberately served to prepare the war of aggression. In judging the objective elements in the case it has repeatedly been pointed out, that the various business traditions of the I. G. which the Prosecution has submitted to the Tribunal could have served various intentions. They could have served especially for rearmament; in conclusion one could also find a remote connection to a war of aggression. The question of the subjective element is therefore of special significance, since the difference between preparation for war (armament) and aggressive war is such, that it is in a large measure dependent on the intention of the political leaders who are the real actors in the matter and is less recognizable from outside circumstances. Many measures may serve for armament, but constitute a measure for a war of aggression if the trend of the statements intentions is of such a nature.

The Prosecution has not brought any direct evidence. It has not offered any evidence with respect to the ideas and intentions of the defendants. It has taken a different way. It tries to bring proof in an indirect way by pointing to a multitude of prosecution documents and advancing the allegation that the defendants were aware of the events which were dealt with in the documents. It comes to the conclusion that the knowledge of these matters must have given rise to the conviction that the efforts of the leaders of the Reich were directed towards a war of aggression and that the defendant had subordinated their

own actions within the I. G. to these efforts. It is thereby proposed to regard their agreement with the aim of the Reich and their approval as proven.

In my closing I have subjected the documents of the Prosecution which are supposed to prove the subjective element in the crime to an examination. I have ascertained that two kinds of documents are involved. The first part consists of those which are of a general nature and which have no connection with the activity of the I. G. The events noted in them are of a general political and historical nature. These facts were known not only to the members of the I. G. Vorstand, but to all Germans and also to all foreigners who were interested in European politics and what was happening in Germany. If Prosecution now tries to draw the conclusion that the knowledge of these facts is to be considered equivalent to knowledge of Hitler's criminal intentions of aggression then one has to draw this conclusion also with regard to all Germans and with regard to the foreigners whose duty it was to observe the events occurring in Europe, the foreign statesmen. One can even assume that the latter had a better overall view than the Germans as they were not the influence of National Socialist propaganda, and the system of terrorism which the Prosecution itself stresses as so terrible.

If one considers the attitude assumed by the European statesmen toward Hitler in the decade before the beginning of the war, if one bears in mind that the foreign powers did not oppose him but took his attitude as an established fact, then one must come to the conclusion that these facts did not give rise to the knowledge which is alleged by the Prosecution.

In this connection, because of the conclusions which the Prosecution tries to draw respecting the knowledge of my client, I refer to his personal statements during his cross-examination by the Prosecution. When Mr. Sprecher suggested to him that one must have had doubts as to Hitler's peaceful attitude, Herr Oster replied in a very impressive manner, that it was precisely this attitude which became

evident from the various measures of the foreign powers which diminished or dispersed the existing doubts and apprehensions. In this connection my client referred to the participation of foreign countries in the Olympic Games held in Berlin in 1936, and furthermore to the Naval Agreement concluded with England and the Friendship Pact concluded with Poland. He gave his answer in a very simple but convincing manner and thereby refuted with respect to himself the theory of the Prosecution that Hitler's intentions to wage a war of aggression could have been concluded from the generally known facts which the Prosecution had presented.

Furthermore, in its Trial Brief the Prosecution has called attention to very many Documents which deal with the activity of the I. G. during the years from 1932 to 1939. These references were made, with the intention of proving that the knowledge of these business occurrences should have left the defendants with the conviction that an activity of this kind could only lead to a war of aggression. In this connection I refer once more to the arguments given by me in my closing Brief, where I subjected the most important of these documents to an examination to determine which of the business occurrences mentioned there were known to my client at the time; for knowledge of these business occurrences is the necessary prerequisite for drawing the conclusion desired by the Prosecution for the existence of the subjective elements of the crime with respect to him personally. None of the documents mentioned there refer to any business transaction which originated in the working sphere of my client. Very few of these documents refer to business events which became known to my client or should have become known to him by virtue of his position and the nature of his sphere of work. My client did not acquire any knowledge about most of the business events mentioned there; in any case, the Prosecution has not advanced the proof incumbent on it that my client had become aware of these occurrences. Furthermore, I am of the opinion



that the Prosecution, by this theory of proving their case the indirect way, puts itself into absolute contact to the findings of the International Military Tribunal, which the latter took into consideration in its judgment. In as far as this tribunal cleared some individual defendants of the charges of participation in preparing a war of aggression, it did so because, as regards those defendants, knowledge of Hitler's plans could not be proven. These persons had at least the same knowledge of the general circumstances as was adduced by the Prosecution to prove the knowledge of my client, because they, as high functionaries of the State and Party, were in a close contact with the leadership of the Reich than my client. I may be permitted to remind the Tribunal of the statements my client made when testifying as a witness on his own behalf. He has explained that he had seen only a few of the men then in power. My argumentation about the position and the work of my client has proved that these referred to matters outside of the events which were connected with the preparation for war. Rightfully the International Military Tribunal took the view that, in order to find a person guilty of participation in preparing a war of aggression, a special knowledge of Hitler's plans would have been required. The Prosecution did not offer any such evidence.

In as far as there are still doubts about this question, I refer again to the personal testimony of my client during the presentation of my case in chief. I believe that during his examination he not only gave an exhaustive picture of his activities, but also succeeded in establishing that his endeavors were in no way directed toward war. His activities during a decade as the leader of the Nitrogen Syndicate, the tendency shown by him in his conduct of international negotiations, the carefree attitude displayed up to the first day of the war in going his way of peaceful agreement, all this permits of the conclusion that he had not lost his confidence in a peaceful solution of the political conflict. If there was need for any proof,

at all, I believe to have furnished it. Herr Oster surely strove for a war as little as the majority of the German people, and surely would have acted differently than he actually did, if he had anticipated a development as it turned out subsequently.

I am now coming to the charges which the Prosecution made against my client in Count II of the Indictment, in connection with the incidents which it regards as spoliation.

In my closing Brief I have, with due consideration to the evidence I have analyzed that part of the happenings which the Prosecution considers as spoliation and looting, and in which it asserts that Herr Oster is involved. In my opinion, his actions, as shown by the evidence, do not justify the conclusion that he committed an act of spoliation.

Therefore, as regards this count, I wish to say but little more. The personal examination of my client has shown that before the war he worked successfully in the nitrogen sector, aiming at an international understanding. There are but few spheres of international cooperation in which such a peaceful tendency has prevailed as strongly as in the nitrogen sector. My client, when he was permitted to testify here on his own behalf, stated that a reasonable attitude, based on the production and consumption situation in the world, could create but one desire, namely to cultivate and continue this cooperation.

He expressed his own attitude, when the war had interrupted the cooperation, in the following words: "I cultivated these friendly relations during the war with all the partners who could be reached, i.e., those who lived in the occupied territories. My idea was not only to help where help was needed, but also to cultivate the business connections, in order to preserve something of the spirit of good will despite the war, and to resume the reconstruction where unreasonableness had broken the threads. (Transcript German p. 10 860, English p. 10716)

His general conduct during the war in the occupied territories is in agreement with this attitude, and has been confirmed by affidavits of many of his foreign business friends. I wish to supplement these statements by some general remarks. At the present time, when the waves of political agitation have not yet subsided in the world, it is not easy for a man living in one of the countries formerly occupied by Germany to make a positive statement or to submit such an affidavit for a person accused as a war criminal before the Military Tribunal in Nurnberg. Reproaches and the suspicion of formerly having been a collaborationist may be the consequence of such an act. This is, for instance, demonstrated by the case of the President of the Netherlands Bank, Holtrop, a business friend of my client, who submitted a statement on his behalf in a not certified form before the beginning of the trial. Upon my request to repeat this statement, in observation of the forms usual here, and with his signature certified, he answered me that he would rather not do so. Nevertheless, he gave his express consent that the formerly given statement, which has the same wording, might be submitted to the court.

Another example: If in the present situation, for instance, the head of the Comptoire Francais de l'Azote, now, in office, Monsieur Lelong, submits an affidavit on behalf of Herr Oster, and writes me in the accompanying letter, that it was a pleasure for him to do that for his friend Oster, this declaration, on account of the reproaches it might entail, must be valued particularly highly. I wish to mention the case of Monsieur Lelong also in connection with the charges, made by the Prosecution in the course of the cross-examination of my client, of spoliation through importation of nitrogen from the occupied Western European territories. I think that Herr Lelong would not have failed to note this alleged case of spoliation. The fact that he made the affidavit submitted



by me might be taken as proof that he sees the affair in a different light from what the Prosecution considers it to be. It would have been interesting to follow this question up further. With the difficulties the Defense encountered in collecting its material, this was not possible to the Defense before the close of the case-in-chief.

Furthermore, I respectfully ask the High Tribunal to give its attention to the affidavit of the Czech national, Mr. Dobias, which I have submitted. Mr. Dobias states that he owes thanks and gratitude to Dr. Oster for his behaviour towards his firm and his personnel. Regarding his own person, he made the reservation that it would have been better for him if Herr Oster had used the practices of the bad German men in power. This remark shows that Mr. Dobias had been blamed, most likely for collaborationism, solely because he had found in my client a partner whose behaviour towards him was a bare reproach. That the charges of collaboration were unjustified might be shown by the fact that Mr. Dobias continues to hold the position he had before the war in Czechoslovakia.

The statements of the two last named gentlemen, as well as of the others which I was in a position to submit on behalf of my client, have, in my opinion, given a plastic picture of the way my client behaved during the war in the occupied countries. They furnish proof that what he said in his personal testimony is in fact in agreement with things as they were during the war.

It would be inconsistent with the character of my client to have his conduct extolled here in very praising words. Also I believe that this is not necessary and that I may limit myself to the mere statement that the evidence has clearly proven my client not to be a man to whom the words of the Indictment, that it was his endeavor to exploit and plunder the occupied countries, would apply.

Regarding the charges against him in the case of Norway, I can only say the following: The Prosecution has not presented a single document showing any sort of activity on the part of my client in the direction of plunder. What the Prosecution has presented in its Trial Brief is nothing but assumption and not evidence. If it requires any counter-evidence, then this is available in the statement by Mr. Eriksen, the Director of the allegedly plundered Norwegian company Norsk Hydro. No man would make such a statement, if his company was plundered on account of any action on the part of my client or Farben during the time of the German occupation.

To Count III of the Indictment I refer to what I have said in my Opening Statement and to the testimony of my client here in this room. Since the Prosecution has submitted no evidence regarding this point, to which my client would have to reply, I can only refer to what I have already said at the start of my plea today, in regard to the responsibility of my client, as well as to the basic statements in reference to this Count of the Indictment made by my colleagues within the framework of the agreed upon division of topics.

Your Honors!

I have now come to the end of what I have to say to the matter itself. I have tried to bring closer to your understanding the personality of my client, his position in the economic and political life of Germany in the past decade and his actions during this time that has been so difficult for all Germans. I hope that I have succeeded in proving that he has not chosen a path which, justify the charges raised here against him.

For almost three years war crimes trials have been conducted here. By proper evaluation of the knowledge about the happening in Germany in the past which have caused these court proceedings, and

comparing them to the activity of my client, then in my judgment the result for him can only be that he does not belong here. I entertain the hope that this conviction will also prove to be the conviction of this High Tribunal.



THE PRESIDENT: Dr. Seidl. Oh, I believe there is a change in the order here, yes, Dr. Wagner for the defendant Wurster.

DR. WAGNER: I have one question, Mr. President. Would it not be better to take the recess now instead of 10 minutes later?

THE PRESIDENT: That only causes us a problem with reference to the sound system. It runs exactly one and one-half hours and then we would have to have another recess prematurely.

DR. WAGNER: I see, excuse me.

Mr. President, Your Honors, when about 15 months ago I returned to my old country after about 14 years, I did not dream that in June I would be making a final plea before an American Military Tribunal for a man accused as a War criminal. If I am doing so, nevertheless, it is because I am firmly convinced that I am thus serving a just cause.

Now it is your task, Your Honors, to pass judgment in this matter, that is on the man whose defense counsel I have the honor to be.

Of all tasks imposed on human beings, that of the judge, in my opinion, is one of the most difficult and most responsible. But it is also one of the highest tasks. Who lifts himself above his fellow-citizens more than he who passes judgment on them? Who has to decide about the facts of men, about happiness and distress of other than he? Whose word is more powerful than his when he, as a criminal judge, pronounces his guilt or innocence? Honor and freedom, in most countries even life, depend on the verdict of the judge. No wonder that the freedom-loving and progressive countries regarded it as one of their most important legislative tasks to obtain guarantees that this power is exercised within the law and with the high aim of realization of justice for all. It depends indeed on the fact that such guarantees exist in a state and it depends on their nature whether one may

characterize this state as free and progressive. No other country in its history has put up a greater struggle for the achievement of these guarantees and for their solid foundation than the United States of America. The names of many of her great men are closely connected with the struggle for these legal guarantees. Many great and independent jurists who, in pointing the way, combined with their judiciary power the great gift of realization of justice based on wisdom, experience in life and legal ability, have grown up in this atmosphere.

I put the question to myself of whether all Germans, who have followed these long and sometimes difficult and tiresome proceedings in this court-room, did not share my feelings namely, whether they too felt the breath of the free judicature which thrones above the parties in majestic calm and objectively endeavors to find the truth, in order to derive from this truth the guilt or innocence of the defendants.

The way to truth is not always easy to find and often it is steep and rocky. How difficult must it be in a case like the present, in which foreign judges are to judge matters, conditions and persons who in many differ greatly from those in their own country. You, Your Honors, have been led, in the course of a period exceeding the past 9 months, over roads leading into deep underbrush which is formed by interests, over-zealousness, misunderstanding and mistake, so that once we heard from the judge's bench that they were being taken too far into the underbrush. Eventually, though not quite easily, the way out of this underbrush was found and, with the help of the Defense, it was possible to reach the road which leads to the truth.

Now what does this truth look like? What does it look like in the relatively small part of the case in which Dr.

Wurster's Defense was permitted to assist in establishing the truth?

First of all I shall give the answer in a negative way: It look entirely different as it was described by the Prosecution in the Indictment as well as in its Trial Brief of 13 December 1947. Expressed in a positive way: It is in complete accord with the facts expressed in my Opening Statement of 19 December 1947 before this High Tribunal. Everything therein claimed by me as facts, proved to be correct and everything I promised to prove has been proven. We have proved the evidence through witnesses whose affidavits were so trustworthy and certain that none of them had been summoned by the Prosecution for cross-examination. Among other things we have established the proof through a single witness who before this High Tribunal gave his effective and irrefutable testimony. We have established the proof through documents and contemporary records, the authenticity of which has not been doubted, and finally, through Dr. Wurster's testimony in his own defense. The impression left by this examination has certainly given the assurance to all those present that, in the person of Dr. Wurster, a man testified who, described circumstances as they actually were to the best of his knowledge and belief.

In 1938 Geheimrat Professor Dr. Carl Bosch, the great Bosch, called Dr. Wurster into the Vorstand of the IG Farben, as stated in our Exhibit 23 by the former member of the Vorstand Dr. Seidel: "As one of the perpetrators of his spiritual heritage" because of his "scientific, technical and human qualities". At the same time Dr. Wurster became a member of the Technical Committee and business manager of the large and well reputed plant in Ludwigshafen/Rhein-Oppau. Permit me, Your Honors, to refrain from going into particulars especially from mentioning those which have already been



appraised in our Closing Brief. Permit me briefly to mention Dr. Wurster's responsibilities in so far as they are important for the question of his guilt or innocence. Dr. Wurster assumed the previously mentioned positions in the great Konzern I.G. Farben at the age of 37 without having had any inside information, as it is stated in Dr. Seidel's affidavit, into the "overall situation prevailing in the Ludwigshafen plant, and much less into the over all situation of the I.G." In his affidavit, our Exhibit 30, Document Book I, Dr. Wurster himself describes how he faced the environment, how he adjusted himself to it and what his attitude was towards this new world. Permit me in this connection to recommend this very description once again to the special attention of the High Tribunal. The decisive point is that on the basis of a practice which existed long before Dr. Wurster's entry into the Vorstand and the Technical Committee, every member of this body had to represent and was responsible for his personal fields of work. This was based on the assumption, which was justified on the basis of experience, that every member in his position is carrying out his duties and tasks in an orderly manner and to the best of his knowledge and ability. In other words a partition of work and therewith a partition of responsibilities was necessarily taking shape in these bodies. "Necessarily, because the plants of the IG Konzern were widely spread over various regions of Germany and because that members of the Vorstand, like Dr. Wurster, who was in charge of a plant employing 35 to 40,000 people at times, could not have worked in any other way but through partition of work and responsibility in the Vorstand and the TEA.

THE PRESIDENT: The Tribunal will be in recess for 15 minutes.

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: You may continue.

DR. WAGNER: Your Honors: A reference to the German corporation law is entirely erroneous in this connection. Without mentioning any other points of view, which have been presented, we are here dealing with a phenomenon which we frequently encounter in the fields of economy and law. The law, in most cases, only codifies those phenomena which have already become a practice in the economic life, therefore it usually lags behind the reality. The economy, however, especially in our time of immensely revolutionized technical progress, continues to develop constantly and often by leaps, and cracks the embankments which had become too narrow for the wide stream of the economic developments, and makes room for its own bed. Thus the German corporation law was no longer sufficient for the large Konzerns and, due to the lack of a law replacing this, a practice had taken shape which remained the sole means for the administration of the Konzerns. This practice has also created a new law, which would certainly have been codified again into the form of a law at some future date, and therewith would have given a new example as to how the law subsequently sanctions that which had long ago been a recognized custom. The remarkable words in the judgment of Military Tribunal No. 4, dated 22 December 1947, page 10646, are clearly in keeping with this phenomenon, and I quote:

"These developments make plain the necessity of appraising the conduct of defendants with relation to the circumstances and conditions of their environment. Guilt, or the extent thereof, may not be determined theoretically or abstractly. Reasonable and practical standards must be considered."

If such reasonable and practical standards are considered, one can only arrive at but one conclusion: Dr. Wurster is responsible only for his personal field of work. The Prosecution itself, with respect to its theory of collective responsibility of the Vorstand for every

development in this large Konzern, has dealt the heaviest blow to this theory namely, that it indicted only part of the Vorstand members and omitted those who, from the theoretical point of view could have been involved in the preparation for a war of aggression much more easily, as they were already in the Vorstand at the time of the alleged treaty with Hitler, and that it included others in the Indictment, like Dr. Wurster, who only became members of the Vorstand shortly before the war.

The other theory of the Prosecution of joint planning and conspiracy is also unfounded and one of the reasons for this is the arbitrary selection of the Vorstand members who have been put on trial. If one could have talked such a conspiracy it would have necessarily been again the older members not put on trial who could have taken part in such a conspiracy and not the younger ones like Dr. Wurster who became members of the Vorstand at a time long after the plans for this alleged conspiracy had been forged. If this fact already proves the impossibility of the Prosecution's constructions with regard to this point. If the Prosecution wants to characterize Dr. Wurster as a participant in this plan, it should have been necessary at least to furnish proof that he either knew thereof prior to his entry into the Vorstand or was informed after his entry and that, through his express agreement or his conduct following his knowledge of the conspiracy, he had demonstrated his intention to participate in the joint plan, which had been demonstrated. The Prosecution not even attempted to offer such evidence must less produced it. The responsibility which is incumbent upon my client, namely for his personal field of work, he has accepted without hesitation.

In our Closing Brief we have stated to Count I of the Indictment what the external and objective facts as they have become manifest from our evidence. I do not wish to repeat the Evidence or to add anything. However, as regards the subjective facts, I should like to stress a few supplementary proven facts, which must convince any just



thinking person of the incompatibility of the very personality of Dr. Wurster with the charges raised against him by the Indictment.

Of the majority of men, perhaps of all, the sentence of Konrad Ferdinand Meyer, the great Swiss poet, may be true:

"I'm not a book constructed artfully

But man, complex and contradictory."

But a man of the high degree of cultural standing like my client, represents within himself, a well-rounded personality complete with definite fundamental views on world and life and the relations among men to each other. These basic views in the long run determine his actions. In small matters he may deviate once, however, on the large issues they dictate his conduct. These basic views of Wurster are Christian-Humanitarian, accordingly with all the stress on the natural-national, turned towards the supernational, the bringing together of humanity and the securing of peace. They consequently are related to National-Socialism as fire is to water.

Whoever pursued Nazism out of inner conviction and with a knowledge of its principles and goals, will thoroughly agree with a war of aggression or the plundering of foreign lands or the enslaving of men, if it is initiated by himself or his country, and will attempt to further it with all of his powers. But a man who, like Dr. Wurster, is guided by principles such as I have derived from the Evidence presented and a study of the man himself and have just described, for such a man a war of aggression, as well as plundering, or human slavery, is something to be despised. He will try, at the very least, to disengage himself from these things, as far as he can, and under no circumstances will he participate personally or be prepared to support them as the deeds of others.

To what extent have I proven these basic principles of Dr. Wurster's? I shall only quote a few proofs to you. In 1940, that means in the time when the Nazi system was in full bloom, Dr. Wurster said, among other things, the following at the public funeral services for Professor Dr. Carl Bosch - and I quote from our Exhibit 24 in Book I:

"We should continue on along the way he (Bosch) has shown us, never tiring, being truth-seeking fighters for the central of nature through science and thereby fighters for beloved Germany and for the progress of all humanity."

These were, Bosch's ideas, as they were and are those of Wurster. To speak of the "progress of all of humanity" and even to demand a fight for that cause, that, indeed is, what I had to prove to be the basis of Wurster's belief. That is the direct opposite and complete denial of the entire narrow and reactionary Nazi ideology.

His rejection of military enterprises during the Nazi period is clearly proven by a series of our affidavits. I will only pick out our Exhibit No. 256. A man who collaborates in the preparation for a war of aggression will surely have a different reaction than the one Dr. Wurster had on 3 Sept. 1939, which he expressed to an old colleague from Farben Dr. Mehner. This man says "Dr. Wurster was deeply depressed by

the outbreak of war." Dr. Wurster expressed himself further to him as follows:

"You will see, this (the war) is the end of our beautiful plant and our country."

This conversation with his confidant took place while Dr. Wurster was in a state of deep depression and ended in a way so characteristic for the man:

"There is nothing left for us small individuals than to carry on where fate has placed us and to try to do our best to preserve the plant that has been entrusted to us and for the people who work there."

Are these the words of a man who plans, prepares and leads wars of aggression? Are thou not rather words, spoken even before 1939, the first of which, the ones about the end of our war threatened country, would have dragged him before Hitler's People's Court and somewhere else, had they become known? And such a man has already spent more than a year in prison, because, among other things, he is supposed to have planned Hitler's wars of aggression. I would really be stealing your time and insulting your experience and judgment if I said even one more word to prove that Dr. Wurster should be acquitted on Count I.

The other Counts of the Indictment, II as well as III, will be vitally affected by this decision.

Whoever would plan, prepare and lead wars of aggression, wants to subjugate foreign peoples and countries, the foreign countries, in order to steal territory or riches, i.e. in the words of the indictment: plundering and spoliation of the foreign peoples, to make them work for you and to exploit them. But whoever repudiates wars of aggression, also repudiates their purpose, namely, robbing, plundering and enslaving foreign workers.

In regard to Count II the Prosecution has also not offered any evidence for any act of Dr. Wurster's that would have led to



spoliation or the plundering of foreign countries. The two incidents which have been forcibly dragged in by the hair, so to speak, in order to make Dr. Wurster eligible for Count II, only give me cause to make two remarks, besides our written arguments: The man, at whose request, and as whose purely technical assistant and companion, Dr. Wurster made a quick trip through a small part of Poland, occupies an honorable official position as the result of an American-British appointment. I have nothing against this. I consider it proper. But what is sauce for the goose is sauce for the gander. One cannot honor the one who, if there were a question of guilt in the first place, would be the most guilty one, and destroy the other, who was only a minor character. And the other man, Dir. Ludwigs, who had actually carried out the negotiations concerning the Wiedenhofer Oxygen plant in his position as a partner and who appears in the Prosecution Documents as such, he also an honored official as a result of an American appointment I don't object to this either, but then one can't accuse Dr. Wurster, who according to Dr. Decker's testimony in our Exhibit 85, Subsections 3 and 6, did not participate in the negotiations and was not a partner. The fact that in both cases of which Dr. Wurster has been accused in connection with Count II, the two men who were the principle figures have not been brought to trial, is proof that there is no indictable offense. Otherwise, could it be compatible with the principle of equality before the law, could it be reconciled with a healthy sense of justice, to let the principle figure go free, and to honor him for the same alleged act for which you imprison and dishonor a secondary figure?

We have proven Dr. Wurster's real attitude towards spoliation and robbery in our Exhibit No. 85 under Subsection 4. Dr. Wurster was urged by the Gauleiter and Chief of Civilian Administration for Lorraine at that time to persuade Farben to acquire the Dieuze Plant of the Etablissement Kuhlmann S.A. Paris and to make a so-called "model factory" of it. This was the only time that my client was personally concerned with the question of acquiring enterprises in the occupied territories.

And what did he do? He turned down this project of the Chief of the Civilian Administration so firmly that it was never carried out.

And this is the man who is accused of spoliation and plundering. What remains of the charges to Count 2 of the Prosecution? Nothing - nothing except acquittal, which I request you, your Honors, to grant on this Count also.

No statement could be further removed from my clients nature, could miss the mark further, be more unjust and, above all, more injured and insult his innermost being, than to say that he committed crimes against humanity; he, whose whole life work was accomplished according to Goethe's line:

"Man should be noble,  
helpful and good",

could only be accused of crimes against humanity because they did not know him and did not hear him before the charges were raised. He was a number 19 or a number X on the list of defendants. Before the Indictment was filed he was not a man of flesh and blood for these people. Above all, not a man with a heart. I would like to believe that in the course of this trial the Prosecution has itself become convinced of the value of Dr. Wurster's personality who, in the end, belongs to the men of whom the German poet Friedrich Rueckert says:

"Those men are wise forsooth  
who travel through error to truth."

Like other factories in the same region, the Ludwigshafen plant always employed foreign workers. During the war a fairly large number of foreigners were assigned to it who had come entirely of their own accord. That is no crime.

The Prosecution represents the case as if all the foreign workers who were employed in the Ludwigshafen plant during the war were involuntary workers. That is the great and fundamental error upon which this Count of the Indictment is based, insofar as the Ludwigshafen plant and its Plant Manager, Dr. Wurster, are concerned. By far the great majority

of the foreign workers who were employed in the Ludwigshafen plant were, in fact, voluntary workers. Among the material which we offered in evidence, we produced documentary proof that foreign workers from the most widely different nations, whether Belgium, France, Slovakia or any other country, applied for work in the Ludwigshafen/Rhine plant. Nor is that surprising in view of the reputation which the Ludwigshafen plant enjoyed far beyond the borders of Germany for its generous social welfare program. Nobody can close his eyes to these facts if it is a question of viewing and appraising the circumstances of the case objectively.

The Prosecution has not produced the slightest proof that the Ludwigshafen plant employed involuntary workers to any extent worth of mention.

To be sure, at a comparatively late date in the war the authorities forced a small percentage of foreign workers on the Ludwigshafen plant who did not come voluntarily. These few workers were forced workers in a double sense. The Nazi authorities forced them to come to Germany to work, and these same authorities compelled the Plant Manager, Dr. Wurster, to accept them.

It was an irresistible compulsion for the workers concerned as well as for the Plant Manager, Dr. Wurster. Just as little as those foreign workers can be charged with the crime of collaborating with the enemy because of their work in Germany, just as little can Dr. Wurster, who had to accept them, be charged with the crime of employing forced workers. Both of them, forced workers and the Plant Manager, Dr. Wurster, were victims, to be sure with differences of degree, of the same system, namely the Nazi system.

Dr. Wurster said the following before you bring his direct examination by me - I quote:

"The idea that anybody should do involuntary work seems to me now, and also seemed to me then, something which is contrary to my entire philosophy of life."

(p. 11 144).



However, under the tyranny of Hitler's Nazism he could not change anything. But as he said in another part of his examination by me before the Tribunal (p. 11 148), I quote:

"In the last analysis there were situations under this dictatorship where any resistance was completely senseless."

But he keeps on, and there you see that he did not make it so easy for himself in examining the questions as to whether resistance was senseless. - I quote:

"And there were other situations where one had to sacrifice oneself entirely, especially when it was a question of the welfare of others, and I tried to act in this way", and then he concludes in his modest manner:

"I did not always succeed."

In case of the employment of involuntary foreign workers any resistance under the tyranny would have been completely senseless and therefore impossible. The sacrifice would have been in vain.

All circumstances, therefore, speak in favor of the existence of a state of necessity with reference to the employment of involuntary foreign workers.

Your Honors, if you consider the depositions and documents with all their appendices which we submitted in our volumes III, IV, IVA and V, a single, splendid picture of great and noble humanity will be revealed to you. The care and devotion with which Dr. Wurster fulfilled this very task could only have been shown by a man of his character. Just like the German factory employees, all these workers were for him primarily human beings toward whom he acted as a human being and for whom he looked out to the full extent of his ability, often against the prescriptions of the Nazi laws. By his tireless and unending efforts in behalf of the foreign workers entrusted to him, Dr. Wurster erected a monument to himself in their hearts. If you will glance over the letters and testimonials of those foreign workers which we have submitted,

you will find the proof of this. What more can you ask than that such foreign workers should express the desire to return to the Ludwigs-hafen plant again? What more can you ask than that such foreign workers should say that they were very happy? What more can you ask than that these men and women should declare that they were treated like their other German fellow workers? And is a man like this, who did everything with this noble and loving care to make up to these people for the loss of their native land, is a man like this to be called a criminal against humanity? If he were one, then words would have lost their meaning. If he were one, who then, may I ask, would not be one?

To speak in Dr. Wurster's own words during his direct examination before your Tribunal, "what a wave of hatred" would have been hurled against him by the foreign workers after the Allied occupation if the allegations of the Prosecution were correct on this point! Instead of this wave of hatred, all these testimonials of gratitude and appreciation on the part of the foreign workers; instead of this wave of hatred the

esteem and sympathy of the American occupation authorities, as is shown by the depositions of Colonel Rhoads and Captain Marshal; instead of this wave of hatred we even have the appreciation of the French occupation authorities, who reposed complete confidence in Dr. Wurster, up to the time of his arrest a year ago by the Prosecution, by leaving him in charge of the plant.

All persons who are intimately acquainted with Dr. Wurster's actions know, just as the foreign workers themselves know and testify, that he has deserved well of them what he could lay claim to, if he were not the modest man that he is, would be gratitude for the great humane assistance and solicitude which he granted to both the happy and to the unhappy.

No other forced workers were employed in the Ludwigshafen plant. We have proved that in two cases the Nazi authorities made a definite attempt to transfer concentration camp inmates to the Ludwigshafen plant in 1944 and that in both cases Dr. Wurster succeeded by extraordinarily difficult and dangerous negotiations in avoiding this. Wherever Dr. Wurster himself had to make decisions he tried everything to the utmost limit of his ability to guarantee the freedom of labor and to honor the concept of humanity. Only look at our documents on the treatment of the Jewish factory employees mostly chemists and engineers, who were employed in the Ludwigshafen plant. There, too, you will hear of material and moral assistance which he granted to all of these persecuted and harassed people, of assistance which at that time was unique in its nature and extent. Under these circumstances I probably hardly need to advance any further arguments on the series of questions which have been discussed in this courtroom under the name of "Degesch".

Your Honors. I have previously quoted a sentence which my client spoke here before you. I repeat: "There were



situations where one had to sacrifice oneself entirely, especially when it was a question of the welfare of others. I tried to act in this way." In March 1945 a few weeks before the collapse of the Nazi Reich when that order of the Nazi government was transmitted to Dr. Wurster, to blow up his factory and come to Berlin, the hour of his greatest trial had arrived. Should he carry out the order and thereby guarantee his personal safety? Or should he assume what was still at that time the extraordinarily great risk of sabotaging the order, and, if circumstances should warrant to gamble away his life? He rejected the easy way, risked his life, sabotaged the order and saved men and plant from a mad and horrible destruction. He had met the great test. For all these reasons the 20,000 workers and employees of the Badischen Anilin- & Soda-Fabrik in Ludwigshafen feel themselves bound to Dr. Wurster by close and solid ties, so closely and solidly that when it was announced in August of last year that he was to be taken away to Nuernberg they spontaneously went out on a sympathy strike, as is shown by our Exhibit 249 and our Exhibit 48.

So in the hour of the collapse he could appear before his workers and employees, whether Germans or foreigners, so he could appear before his own people and before the victorious Allies who were occupying the city and factory, just as he appears before you, Your Honors; with that eminently modest bearing which can best be expressed in the words of the imprisoned Florestan in Beethoven's "Fidelio":

"Sweet consolation in my heart,  
My Duty I have done."

Just as that Florestan, arbitrarily locked up by his enemy, was freed by the King's minister, so I had innumerable others with me hope that this conscientious man will be freed by your verdict, the verdict of independent judges of the free and mighty United States of America.

Justice will demand this acquittal for my client. But at the same time it will be a contribution so necessary to the moral reconstruction since it will restore to many that without which men cannot live together in peaceful communities; the faith in justice.

THE PRESIDENT: Dr. Seidl, are you ready now?

DR. SEIDL (Dounsel for Duerrfeld):

MR. PRESIDENT, YOUR HONORS.

The defendant Dr. Walther Duerrfeld is one of the four defendants in this trial against the IG Farbenindustrie A.G. who have not been members of the Vorstand of this corporation. Neither did he belong to the Technical Committee (TEA), the Commercial Committee (KA), the Technical Commission (TEKO) or to any other organization of this enterprise.

(1) Counts I and IV of the Indictment.

Yet he is accused of having participated, in his position in the IG and in other ways, in the planning, preparation, the beginning and conduct of wars of aggression in joint cooperation with the rest of the defendants and various other persons, over a period of years prior to 8 May 1945. It is alleged that he held high positions in the financial, industrial and economic life of Germany and that in this capacity he had participated, as perpetrator or accomplice, in the planning and execution of the above mentioned crime. This allegation in the Indictment is even refuted by Appendix A of the Indictment, which contains a survey of the positions held by the individual defendants, and also by the result of the evidence. Nothing whatsoever is contained in this survey which could justify such a conclusion with respect to the position of the defendant Dr. Duerrfeld. On the contrary, it shows that, at the outbreak of the war in 1939, he was one of about 10 chief engineers in the Farben Leuna plant and that in 1944 he was appointed as

director together, with two other main section heads of the Auschwitz Farrow Plant, but then this position did not involve any change in his real position as Prokurist.

I shall refer to the contents of these statements and now turn to Count II of the indictment of page 4 of my Plea.

The defendant Dr. Duerrfeld is accused in Count II of the Indictment of having committed war crimes and crimes against humanity within the meaning of Article II of Control Council Law No. 10 together with other defendants during the period between 12 March 1938 and 8 May 1945 by participating in the theft of public and private property, spoliation and plundering, and in other property crimes in countries which were occupied by German troops during wars of aggression. In its presentation of evidence the Prosecution did not submit a single proof which could justify the conclusion of such participation on the part of Dr. Duerrfeld. It is, therefore, superfluous to go into this Count of the Indictment in greater detail.

I now turn to Count III of the indictment.

In this Count of the Indictment the charge is brought against the defendant Dr. Duerrfeld of having committed war crimes and crimes against humanity during the period between 1 September 1939 and 8 May 1945 by participating together with the other defendants in the enslavement and deportation of countries which were under Germany's military occupation, furthermore, in the enslavement of prisoners from concentration camps and in the employment of prisoners of war for tasks which were directly concerned with military operations. With reference to the defendant Dr. Duerrfeld, the Prosecution has not produced any evidence which refers to any other plants of the I.G. besides the Auschwitz plant. The Defense, therefore, can limit itself to examining the activity of the



defendant, Dr. Duerrfeld, with regard to questions of fact and law in his capacity as Construction and Assembly Manager of this plant during the period from 1941 to 1945.

The fourth Buna plant of Farben was constructed by virtue of an order issued by the Reich Minister of Economics of 2 November 1940 (Prosecution Exhibit 1408, NI-11781) and Prosecution Exhibit 1413, NI-11112). The choice of location was exclusively determined by the transportation situation, the nature of the terrain and the extraordinarily favorable juxtaposition of coal, lime, gravel and water in the region of Auschwitz. In connection with this I refer above all to Prosecution Exhibits 1412 and 1414. The hearing of the evidence clearly shown that the concentration camp situated in the vicinity of Auschwitz, which was at that time very small, played no part in the choice of the location.

The defendant Dr. Duerrfeld learned of the proposed construction of a new buna factory and processing plant in the region of Auschwitz for the first time in the beginning of March 1941 at a date when the choice of a location for this plant had already been decided for a long time, as is shown by the documents of the Prosecution in Volume 72. In connection with this I refer to the letter which the defendant Dr. Ambros addressed to Dr. von Staden, the manager of the Leuna plant, on 15 March 1941 (Duerrfeld Document 1450, Exhibit 125), and in which it is announced that the defendant Dr. Duerrfeld is to be shown his future duties for the first time on 24 March.

What was the Position of the Defendant Dr. Duerrfeld in the Auschwitz Plant of Farben?

The new Auschwitz plant of Farben was a so-called Two Sparte Plant. The Buna plant was planned and constructed by Sparte II, while Sparte I was responsible for the planning and construction of the processing plant. The coordination of all

the workers participating in the construction of this tremendous new plant was effected in the joint construction conferences which were held under the direction of either the defendant Dr. Ambros and the defendant Dr. Guetefisch, or the latter's representatives. The Prosecution has submitted the records of 16 construction conferences in evidence. Twenty-eight such construction conferences were held in all. The defendant Dr. Duerrfeld was proposed as Construction and Assembly Manager. At first he performed his duties from Leuna and did not move from there to Auschwitz with his engineering working staff until autumn 1942. Up to this time the superintendence of the construction job was exclusively in the hands of Chief Engineer Faust from Ludwigshafen, and the responsibility of the plant managers and construction managers of the numerous construction and assembly firms which were employed in setting up this new plant.

The position of the defendant Dr. Duerrfeld within the plant management is shown by the plan of organization for the Auschwitz plant of Farben of 22 July 1944, which was submitted by the Defense as Exhibit 126 (Duerrfeld Document 1516). The plan of organization reproduces the status as of 1 July 1944 and was described in detail to the Tribunal by the defendant Dr. Duerrfeld during his examination on the witness stand. According to this plan of organization the plant management was subdivided into five Main Departments. The construction Management formed one independent Main Department and was under the direction of Chief Engineer Faust, who was examined as a witness before this Tribunal. The second Main Department and was under the direction of Chief Engineer Faust, who was examined as a witness before this Tribunal. The second Main Department was the Engineering Department, which was under the direction of the defendant Dr. Duerrfeld in his capacity as Construction and Assembly Manager. The manu-

facturing departments were likewise independent Main Department were likewise independent Main Departments and were under the direction of Dr. Einfeld and Dr. Bruas. Both of these Main Department Chiefs have also been examined as witnesses before this Tribunal. Finally, the Business Department and the Personnel Department formed independent Main Departments which were directed by Dr. Savelsberg and Dr. Rossoach. Dr. Savelsberg has likewise testified as a witness before this Tribunal.

The Chiefs of the six Main Departments of the plant management of Farben in Auschwitz were not chosen and appointed by the Defendant Dr. Duerrfeld, but by the agencies of Farben which were responsible for this.

The position of the Defendant Dr. Duerrfeld in the over-all planning of the Auschwitz plant of Farben is further shown by the sixteen records of Construction Conferences which have been submitted by the Prosecution.

From 1943 on the management of the plant itself was in the hands of the Chiefs of the six Main Departments. The defendant Dr. Duerrfeld has discussed this collaboration of the Main Department Chiefs in detail on the witness stand and I refer to the contents of this testimony. Since at first the plant was in the process of construction it was in the nature of things that Dr. Duerrfeld in his capacity as Construction and Assembly Manager should assume the leading position in this body with respect to the other Main Department Chiefs until the end of the construction period, and that he had to head the shop committee of their employees until further notice.

At this point, at the express request of my client, I would like to add something that is not in the plea. Dr. Duerrfeld stated expressly on the witness stand that from October, 1942 on he took over the local construction assembly management



and thus the functions of the leader of the plant in the sense of the law until an other plant manager was appointed. He does not want to leave any doubt about the fact that for the orders which he passed on or which he himself issued he assumed the fullest responsibility, and also for his collaborators, as far as they can refer to the spirit of his orders. In doing so, he has a clear conscience.

The position of the defendant Dr. Duerrfeld within the plant management would be only incompletely indicated if at the same time reference was not made to the fact that besides the 250 independent construction and assembly firms which were charged by the IG with the construction of this new plant. The Branch Office of the Armament Ministry (Armament-Construction Management) played an important part in carrying out the tasks of construction and assembly and independently carried out entire construction projects. The defendant Dr. Duerrfeld has testified on the witness stand about this, too.

The next paragraph in the manuscript of my final plea deals with a few legal questions which are connected with the employment of foreign workers at the Auschwitz plant of Farben. I should like to ask the Tribunal to take notice of these statements, and I do not want to read them into the record.

The same applies to Paragraph 7 of my final plea, which deals with the housing of foreign workers. The same is true of Paragraph 8, which describes the feeding of the foreign workers in detail; and also to Paragraph 9, which deals with the medical care for the foreign workers and the labor conditions of the foreign workers in Farben.

I now turn to page 14 of my manuscript where the employment of prisoners of war is discussed under Paragraph 10.

(10) The Employment of Prisoners of War.

English prisoners of war were employed with the construction and assembly of the new plant at Auschwitz from the end of 1943. There was a maximum of altogether 1200 prisoners approximately. As the hearing of the evidence has shown the Plant Management had no authority of its own with reference to guard duty, billeting, feeding, medical care and exercise of disciplinary powers. On the contrary, this was exclusively in the hands of the local Wehrmacht agencies. In view of the fact that the Prosecution offered evidence which would justify any charges along these lines, it becomes unnecessary to discuss these questions in any greater detail. The English prisoners of war whose affidavits were presented by the Prosecution, have on the contrary, expressly admitted that they themselves had no reason to complain about their treatment. The Prosecution also offered no proof for the allegation that these English prisoners of war, or prisoners of war in general, were employed in plants of Farben under conditions which would constitute a violation of the Hague Rules of Land Warfare dated 18 October 1907, and the Geneva Agreement concerning the treatment of prisoners of war of 27 July 1929. In view of the fact that the verdict of Military Tribunal IV, in Case No. 5, versus Flick contains some findings in this question which are not readily apparent from the text and the sense of the respective regulations, I shall here briefly discuss the most important points with regard to the interpretation of these regulations in connection with the question of the employment of prisoners of war in general:

Concerning the question of the employment of prisoners of war, Article 6 of the Hague Rules of Land Warfare, dated 18 October 1907, and Article 31 of the Geneva Agreement of 27 July 1929. The following statements deal with the interpretation of these articles. I should like to ask the Tribunal again to take judicial notice of these statements and shall forego reading these statements into the record.

I shall turn to Paragraph 11 in my manuscript in which the employment of inmates from the concentration camp Auschwitz is discussed. This is on page 17.

The charges contained in the indictment refer mainly to the employment of prisoners in the construction of this new plant of Farben in Auschwitz. Both the Prosecution and the Defense have submitted extensive evidence on this point.

(12) The Order for the Employment of Concentration Camp Prisoners.

The employment of concentration camp prisoners in the construction of the new plant was initiated by an order of Goering of 18 February 1941 in his capacity as Commissioner for the Four Year Plan. The Prosecution has submitted this order as Exhibit 1417 (NI-1240) (Volume 72). This order states among other things the following:

"I request that the following steps be taken in order to assure the supply of laborers and the billeting of these laborers needed for the construction of the Auschwitz Buna Plant in East Upper Silesia, which will commence with the greatest possible speed;

1. ...
2. ...
3. Procurement of the largest possible number of skilled and unskilled construction workers from the adjoining construction camp for the construction of the Buna Plant".

This order of the Plenipotentiary for the Four Year Plan was addressed to Reichsfuehrer SS Himmler. Copies of the order were transmitted to four additional government agencies. One of these agencies was that of State Secretary Dr. Syrup in the Reich Ministry of Labor, that is to say, the supreme planning authority for all labor questions at that time --namely, before the appointment of Gauleiter Sauckel as Plenipotentiary General for Labor Allocation. Two additional copies were addressed to Reich Minister Dr. Todt in his capacity as Minister for Munitions and as Plenipotentiary General for the Control of the Building Industry. Finally, the fourth copy was addressed to the Plenipotentiary General for Special questions of Chemical Production. All the national authorities and govern-



ment offices whose duties included or were connected with the procurement of workers and the coordinating of labor allocation were thereby informed.

As already mentioned, it was not until the beginning of March 1941 that the defendant Dr. Duerrfeld received the request from the defendant Dr. Bustafisch to collaborate in the building and construction of the plant which was being planned in East Upper Silesia. On 20 March 1941, in connection with the preparatory work, he and the Construction Superintendent, Chief Engineer Faust, accompanied the defendant Dr. Bustafisch to the conference in Berlin with SS Obergruppenführer Karl Wolff. One week later a conference was held with the Commandant of Auschwitz Concentration Camp, in which two additional engineers from Farben participated besides Chief Engineer Faust and the defendant Dr. Duerrfeld. On 30 March 1941 in Leuna the defendant Duerrfeld himself composed a report about this conference in Auschwitz of 27 March. The Prosecution has submitted this report as Exhibit 2200 (NI 15148).

The question now arises:

Does the Employment of Concentration Camp Prisoners Meet the Requirements of a Punishable Action?

The employment of prisoners in the construction of the new plant in East Upper Silesia was decreed by an order of the Commissioner for the Four Year Plan, that is to say, the supreme planning authority for all questions of the war economy. The legal consequences resulting from this fact will be examined later.

Now, to begin with, the question to be discussed is whether the employment of prisoners from a concentration camp is admissible regardless of this binding order.

It is obviously not possible within the limits of this legal appraisal to discuss all the questions arising in connection with these camps in an even approximately exhaustive fashion. In order to answer the questions arising in this trial, however, this does not appear necessary. On the contrary, the following remark is sufficient:

The concentration camps established in Germany were State establishments. They were no less so than the penal institutions of the administration of justice and were carried in the budget of the German Reich just like the latter. These camps had their legal basis in the "Decree of the Reich President for the Protection of People and State" of February 1933 (Reich Law Gazette Part 1, 933, P. 83.)

This Decree in part suspended the basic rights of the Constitution of the Reich in order to enable the State agencies and in particular the Security Police to interfere with personal liberty and freedom of assembly to the extent which seemed necessary to them in view of the political situation at the time. It cannot be doubted that this Decree to a large extent removed the foundations of the "State based on law" in the traditional sense. However, it is likewise certain that one still cannot see the essential facts constituting a punishable action in the suspension of the basic rights of the Constitution by a law promulgated in a legally valid way and in the establishment of State concentration camps alone; for as a sovereign State Germany was completely free to regulate her own internal affairs.

Insofar as persons were committed to a concentration camp for reasons of State Security and other political reasons, this was done through an "Order for Protective Custody" issued by the Reich Main Security Office (Amt IV, Gestapo Office). In connection with this, reference should be made to the law concerning the Gestapo of 10 February 1936 and the implementation decree of the same date issued in conjunction with this.

However, it would be erroneous to assume that only prisoners who were committed for State police or other political reasons were lodged in the State concentration camps. A large part of the prisoners were not committed to these camps for political reasons but for criminal reasons. Some of these were persons who had not only been sentenced to imprisonment by regular courts in implementation of the respective provisions of the Reich Penal Code, but who had also been sentenced to security detention.

These sentences of security detention were largely executed in the State concentration camps. Besides these security detainees, other criminals, anti-social elements and similar categories, were



also frequently committed. These prisoners were not committed by the Gestapo but by the Reich Criminal Police Department (Amt V of the Reich Main Security Office) and in implementation of the respective provisions of the Reich Penal Code and the police administrative laws of the provinces.

In connection with this it might be pointed out that in April 1943 alone, according to the testimony of the witness Schermuly of 12 May 1948, more than 2000 prisoners were transferred from Mauthausen concentration camp to Monowitz Labor Camp (Camp IV), who had been committed to a concentration camp solely because of their criminal record and their anti-social attitude.

It is obvious that after the outbreak of the war State police measures also had to be taken against foreign nationals in the occupied territories. As a general rule these measures also were taken by the authorized agencies of the Reich Main Security Office in implementation of regulations which had been decreed by the local military commanders in accordance with generally recognized rules of international law.

Regulations of this kind were also issued by military commanders and the Allied Control Council, in Germany after the latter's unconditional surrender. Thus, for example, Directive No. 38 of the Allied Control Council for Germany of 12 October 1946 contains detailed regulations on arrest and internment and furthermore the surveillance of National Socialists, militarists and "any possibly dangerous Germans". According to Part 1, Figure 1c, it is the purpose of this directive to draw up common rules for all Germany concerning "the internment of Germans who, though not guilty of specific crimes, are considered to be dangerous to Allied purposes, and the control and surveillance of others considered potentially so dangerous". That this is a political measure and that the political convictions of the prisoner constitute the reason for the arrest is clearly shown by Part 1, Figure 5, which states literally:

"A distinction should be made between imprisonment of war criminals and similar offenders for criminal conduct and internment of potentially dangerous persons who may be confined because their freedom would constitute a danger to the Allied cause."

As a matter of fact, since the termination of hostilities about one million German nationals have been confined in prisons and camps for political reasons, in all four zones of Germany by the Allied authorities. A part of them are still in custody. Finally, in judging the above-mentioned Directive and in determining its value as evidence, the fact should not be disregarded that it was issued on 12 October 1946, that is to say, almost one and a half years after the termination of hostilities.

Now, the hearing of evidence in this trial has shown that toward the end of the war about 600,000 prisoners were confined in concentration camps. The greater part of these prisoners were employed in enterprises of the war economy, since in the second half of the war the civilian production had only very modest proportions.

These prisoners were employed in 700 enterprises and accommodated in about 500 labor camps.

If one takes these figures into consideration, it seems indeed inconceivable that these prisoners should not be subjected to the same labor service duty as were all Germans and all members of the other belligerent nations as a matter of course and as was regulated by law. A different opinion would be all the more inconceivable, since the Hague Convention of 1907 as well as the Geneva Convention of 1929 concerning prisoners of war also provide a labor duty for prisoners who had fallen into the hands of the enemy in the course of combat. It is inconceivable, and no honestly thinking person would understand it if prisoners of

war, who had been taken prisoner while fulfilling their duty towards their country, were placed in a worse position than those persons who were described above and had been committed to a concentration camp for the aforementioned reasons. Until now, nobody will have thought that, at least during the war, the general labor duty should not apply to the prisoners in the concentration camps too. This has probably also been the reason that <sup>no</sup> regulations have been issued through which this labor duty was expressly provided. It was thought to be a matter of course. In this connection reference must be made, however, to the various ordinances regulating the labor duty of convicts, persons held in security detention or in detention pending trial. This labor duty especially results from the Law of Penal Execution in the wording of the publication of 22 July 1940 which was submitted by the Defense as Exhibit Duerrfeld 379. Moreover, reference must be made to the general decree of the Reich Minister of Justice dated 7 June 1938, which introduced labor duty for persons held in detention pending trial even before the outbreak of the war (Exhibit Duerrfeld 377 and 378).

Consequently no fundamental legal objections can be raised against an assumed labor duty of the prisoners in State concentration camps. This applies first of all to the State agencies which make this labor allocation and which are in charge of the administration of the camps. All the more this must apply to private entrepreneurs who were allotted prisoners by the Labor Office, or to those cases in which prisoners were employed by order of the supreme planning authority of the Reich, i. e. the Plenipotentiary of the Four Year Plan. Neither Farben nor any other industrialist had the possibility of examining in detail whether a prisoner had been lawfully or unlawfully committed to a prison or a concentration camp.

A legal examination could also not be made as to whether a labor duty could be assumed in consideration of the special circumstances of



the individual case or whether it could not be, for some special reasons. If such a possibility had been expected of, or even allowed an entrepreneur, this would practically have been the end of any governmental activity. In fact, so far no State has proceeded, even to take something of this kind into consideration. For the rest, the defendant Dr. Duerrfeld did not develop any personal initiative in the field of the employment of prisoners. His measures were strictly in accordance with the order of the Plenipotentiary of the Four Year Plan dated 18 February 1941

and with the directives given to him by his superiors during conferences on building matters and on other occasions. It is quite natural that at the building site relatively few prisoners were employed at a time at which the building site and the installation were still in the beginning stages and that the number of prisoners increased with the always increasing total number of workers and finally amounted to 32000 workers. The evidence submitted by the Defense unambiguously shows that the percentage of prisoners among the total staff of the plant remained almost unaltered during the whole time.

I now turn to Camp IV, Monowitz, at which inmates were housed beginning in October, 1942. Up to the summer of 1942 the prisoners employed with the Auschwitz plant of Farben were brought every day from the Auschwitz concentration camp to the building site by railroad, by trucks and part of them also on foot, and after the working hours in the evening they were brought back. In view of the relatively great distance between the camp and the building site, it can be understood that this transport caused inconveniences and was above all a great source of trouble for the prisoners themselves. It was therefore quite natural that it was suggested that the prisoners who were employed with the plant be housed in a labor camp in the immediate vicinity of the plant. By this the time consuming and fatiguing transport to and fro was not only avoided, but the living conditions of the prisoners also improved in other respects. This was clearly shown by the evidence and as regards this I beg to refer to the numerous documents which were submitted by the Defense in this connection. In this way one succeeded not only in better protecting the prisoners against the danger of epidemics not a single epidemic disease broke out in the Monowitz camp -- but even the food of the prisoners could be considerably improved. There can be no doubt that Farben contributed considerably to the improvement of the general

living conditions of these prisoners by making Camp IV, which was originally destined for free workers, available to them. As was clearly shown by the evidence, Camp IV differed in no way from the other workers' camps as regards construction.

(15) The Camp IV: Labor Camp or Concentration Camp?

The Prosecution alleges that Camp IV - Monowitz - was a concentration camp. This opinion is wrong. The evidence showed on the contrary that Camp IV was one of the 42 labor camps which, as branch camps, belonged to the large concentration camp Auschwitz. In this connection I refer to the letter addressed by the Chief of the SS Economic and Administrative Main Office to the Reichsfuehrer SS on 5 April 1944 which was submitted by the Defense as Exh. 371 (Document Book XVI). In this letter the organization of the Auschwitz and Birkenau camps and of the labor camps belonging to them is described in detail.

(16) The Administration of Camp IV.

The administration of Camp IV, where the prisoners employed with Farben were accommodated, was exclusively in the hands of the responsible SS agencies. The Camp Commandant of this labor camp was an SS-/bersturmfuehrer, who in turn was subordinate to the Commandant of the Auschwitz Camp III which is mentioned in Exh. 371. He, in turn, received his orders and instructions exclusively from the inspector of the Berlin-Oranienburg concentration camp. By order of the Reichsfuehrer SS Himmler of 3 March 1942, the inspectorate of the concentration camps, which up to that date had been subordinated to the SS Main Operational Office was taken away from this office and incorporated, as Aufstellungsgruppe D (Division D) into the Economic and Administrative Main Office, the chief of which was SS Obergruppenfuehrer and General of the Waffen SS Oswald Pohl, who was interrogated before this Tribunal as a witness. Farben and the Auschwitz Works Administration had no authority whatsoever to interfere with the administration of Camp IV. This has, I believe, unequivocally been proved by the evidence introduced in this



trial. The results of the evidence are throughout consistent with the contents of the documents and the depositions of the witnesses, which were submitted and made in other cases before the Nurnberg Military Tribunals.

Just as in other concentration and labor camps, there existed a self-administration of the prisoners also in camp IV. The senior camp inmate, the senior block inmate and the other functionaries in this sharply defined hierarchy were picked out by the prisoners themselves. According to the evidence taken in this and in other trials conducted before the Nurnberg Military Tribunals, it must, in accordance with the literature published in the meantime about the concentration camps, be presumed that in the Camp IV too the SS confined itself to the maintenance of the external order, leaving the shaping of the living conditions in the camp itself and in the huts nearly exclusively to the prisoners' self-administration. Just as in other camps, the self-administration seems to have been in the camp IV too in the hands of a comparatively small circle of left-wing political prisoners which monopolized all important key positions in the internal camp administration, wielding an authority the extent of which can hardly be imagined by an outsider, and which by no means came to an end when the camps were dissolved.

#### The Accommodation of the prisoners in Camp IV.

Farben had, at the expense of five million Reichsmark, constructed the camp where the prisoners were accommodated later on. But the quartering in the camp and the fixing of the number of people quartered in a hut was again exclusively a matter for the camp administration and/or its commandant. The same applies to the use of the space of a hut for special purposes (huts for the sick, workshops, etc.) This distribution of the space of the huts was completely outside the influence of Farben Works Management and exclusively done at the discretion of the SS camp administration. But the evidence submitted by the

SS camp administration. But the evidence submitted by the defense shows that the beds made available by the Farben Plant Management were practically always sufficient for the reception of the prisoners accommodated in the camp, and that difficulties which could not be remedied because of the situation caused by the war and were outside the sphere of influence of the Works Management can always have occurred only temporarily.

THE PRESIDENT: The Tribunal will recess until nine o'clock tomorrow morning.

(The Tribunal recessed until 0900 hours 9 June 1948.)

Official transcript of the American Military Tribunal No. VI, in the matter of the United States of America, against Carl Krauch, et al., defendants sitting at Nurnberg, Germany, on 9 June, 1948, 0900-1645 hours, Justice Shake, presiding.

THE MARSHAL: Persons in the Courtroom will please take their seats. The Honorable, the Judges of Military Tribunal VI. Military Tribunal VI is now in session. God save the United States of America and this Honorable Tribunal.

There will be order in the Court.

THE PRESIDENT: Make your report, Mr. Marshal.

THE MARSHAL: May it please Your Honors, all defendants are present in Court.

THE PRESIDENT: You may continue with your argument, Dr. Seidl.

DR. SEIDL (for the defendant Dr. Duerrfeld): Your Honors, I am now down to the chapter dealing with, "Medical Care for the Prisoners", on page 28 of my Manuscript and Final Plea.

(18) Medical care for the Prisoners.

What has been said with regard to the administration of the camps applies also to the medical care for the prisoners of Camp IV. This, too, was the exclusive responsibility of the physicians of the SS, and the plant physician of Farben had no power to influence it any way the medical care for the camp inmates.

The responsible camp physician and his associates received their orders and instructions from the garrison physician of the SS, who in turn was exclusively subordinated to the leading concentration camp physician in the concentration camp inspectorate at Berlin-Oranienburg. The latter received his technical instructions from the Reich Physician SS and Police.

The evidence has shown that the establishment of the infirmary in Camp IV satisfied all demands which might be made for the establishment of a sick-bay in a labor camp. It was, incidentally, not really the purpose of an infirmary in a labor camp to provide for the stationary treatment of



seriously sick prisoners. For this, the big hospitals were used, in this case the infirmary of the Auschwitz concentration camp.

The Prosecution alleged that the prisoners in the infirmary of Camp IV were admitted for a maximum period of only two weeks and that not more than 5 percent of the total number of prisoners were allowed to be treated simultaneously in the hospital. These allegations made by the Prosecution are incorrect and have been unequivocally refuted by the evidence. That this allegation is untrue is also shown by the sick records of Camp IV submitted by the Prosecution itself.

But the evidence has also shown that medical care for the prisoners was to a great extent in the hands of the inmate physicians and inmates acting as medical assistants, and that the SS Physicians confined themselves as a rule to exercising general supervision. In these circumstances one cannot help getting the impression that for some of the abuses alleged by the Prosecution witnesses, not the SS physicians were to be blamed, but rather the measures taken by those representatives of the prisoners self-administration who exercised the real power in the infirmary.

(19) The Prisoners' Food Supply.

The food supply for the prisoners was, like the guard duties in the camp, the quartering, and the medical care, in the hands of the SS camp administration, in which again in self-administration of the prisoners participated to a large extent. Beginning from March 1948, the supply services of the Auschwitz plant of Farben took over the purchasing and the food delivery for Camp IV in the same manner as they had done from the beginning for the free workers and their camps. The food purchased in accordance with the ration scale fixed by the responsible authorities, in particular by the food offices and the trade inspectorate.

The Defense submitted voluminous material about the amount of the rations and the actual quantity of food delivered to Camp IV. The tables sub-

mitted to this Tribunal show that with regard to the quantities allotted as well as to the calories, the prisoners received many times as much food as the civilian population is actually receiving today.

The evidence submitted by the Defense also shows that 80-90 per cent of all the prisoners received supplementary rations for heavy workers and the rest rations for working long hours.

Although it is true that beginning from March 1943 Farben in the interest of the prisoners took over the purchasing and the delivery of the quantities of food, this made no difference as to the responsibility of the SS for preparation and distribution of the food in the camp itself. In practice, Farben had no influence on that, and here too, it seems to have been the practice that the SS confined itself to general supervision, while for the rest the actual disposition of the quantities of food delivered by Farben was in the hands of the leading circle of prisoners.

The "Buna" or construction soup (Bausuppe), which Farben supplied at the building site itself, was a supplementary grant of the works management, which was given to the prisoners on top of the officially allotted rations.

(20) The Clothing of the Prisoners.

The SS was also exclusively responsible for the clothing of the prisoners. But the Defense has submitted evidence which shows that the plant management in this regard too did whatever was possible in order to render conditions more favorable for the prisoners. It made a great number of clothes available and above all, distributed jackets to protect against the frost during the winter months. Wherever it could do so, the plant management tried to help the prisoners by distributing mittens and linen. It is quite natural that certain limits were set to the plant management's efforts in this direction, in view of the extraordinary difficulties due to the war. The plant management's efforts in this respect must be appre-

ciated all the more, and they show erroneous the Prosecution's allegation is that the plant management had shown itself more or less indifferent to the fate of the prisoners.

(21) Disciplinary authority over the Prisoners.

After the preceding statements it is indeed a matter of course that the administration of disciplinary authority over the prisoners was exclusively in the hands of the SS and/or the Camp Commander. This was quite clearly confirmed by the evidence. In this connection the fact seems worth mentioning that even the Camp Commander himself held only a very restricted disciplinary authority of his own over the prisoners. It was for instance not within his sphere of jurisdiction to inflict corporal punishment, let alone heavier punishment. The punishment reports submitted by the Prosecution show that the Camp Commander was allowed to have corporal punishment executed only after previous consent of the Inspectorate of the Concentration Camps in Berlin (Division D of the Economic and Administrative Main Office). In the punishment report the offense had to be described, and the punishment could be executed only after the Department Chief in charge had given his consent and the camp physician had made no objections to the execution of corporal punishment from the medical point of view.

I now turn to the

(22) Employment of the Prisoners in the Auschwitz Plant of Farben.

As was shown by the evidence, the type of work was not always the same during the different periods. It is quite natural that at the beginning of the construction work the prisoners were mainly employed for excavation and proper building work, just as were the Germans and foreign workers.

The prisoners could not be employed for higher types of work during the first one and a half years, for one thing because the work had to be done under the direct supervision of the SS guards until the fence around



the plant was already, and this was, in general possible only if they were employed in large detachments.

These conditions changed radically when individual sectors of the plant area had been fenced in and the prisoners could move about in these individual sectors of the building site, and part of them could also be employed according to their professional training.

After the completion of the fence around the whole building site at the beginning of 1943, the SS administration restricted itself to having the prisoners who were employed in the plant guarded by a cordon of guards outside the fence around the plant and by occasional patrols within the plant area. The prisoners could move freely within the plant itself and were only subordinate to the Kapos (Prisoner foreman), who were themselves prisoners. After that date the plant management was also in a position to employ prisoners in small groups for skilled work. In this regard, the evidence has shown that the plant management began very early to employ prisoners for higher qualified work as well and even to train them in courses for this purpose. This was of course not only in the interest of the prisoners but also in that of the plant management. The documentary evidence submitted by the Prosecution, as well as that presented by the Defense, in particular, shows unambiguously that above all the lack of suitable skilled workers was a great obstacle to the quick erection of the plant.

Therefore it is not understandable, if the Prosecution alleges that it was the intention of the Plant Management to use the prisoners only for unskilled work.

When the assembly work started the prisoners could be allowed more freedom at the plant itself, and actually from 1943 on it was so that prisoners worked on the same construction jobs and on the same assembly jobs together with German and free foreign workers, without any difference as to the type of work.

At work in the plant, the inmates were kept together in so-called "Kommandos" (work details). These work details were formed in Camp IV by the Labor Allocation Leader of the SS (Arbeitseinsatzfuhrer). But actually the formation of work details and the assignment of inmates to these various work details, of which there were several hundred, lay entirely in the hands of the prisoners' self-administration. The Labor Allocation Office was, following the sick bay, one of the most important key positions, which was held by the leading group in the self-administration of the prisoners. The SS obviously limited the number to a general supervision, Farben had no influence upon the composition of the prisoner details. The works management could only report to the Labor Allocation Office the need for workers and requisition certain categories of skilled men, for instance, bricklayers, locksmiths, welders, carpenters, clerks, etc., which prisoners were then actually assigned to the various details; whether the planned work was distributed among the prisoners according to their skills was practically exclusively within the discretion of the prisoners who had influence with the Labor Allocation Office of Camp IV.

Just as in the sick bay, the SS obviously limited itself here too to general supervision.

Besides, the evidence has revealed that many prisoners at the Auschwitz plant of the I.G. were also assigned to administrative jobs and that entire office, as for instance the pay-roll accounting office, were at times staffed exclusively with prisoners. However, narrow limits

were set to the works management in this respect, since the administration of the concentration camps did not wish such jobs to be assigned to prisoners. In this connection I refer to the order of the Chief of the Economic and Administrative Main Office of 26 June 1942, which I have submitted as Exhibit Duerrfeld No. 374 (NO-2318, Vol. XVI). This order says among other things:

"... Moreover I have ordered that prisoners should be transferred at least every half year. Therefore the assigning of prisoners to bookkeeping jobs or to other duties warranting extensive training is to be avoided."

(23) The Working Speed of Prisoners.

The Prosecution claims that the prisoners were forced to a particularly excessive working speed. The evidence presented by the Defense and in almost every affidavit this question has been touched upon by the witnesses for the Defense - proves that this allegation is entirely wrong. First I must refer to the fact that the supervisors and foremen of the I.G. and the construction and assembly managers of the numerous firms charged with the construction of the individual plants of this gigantic enterprise had no right at all to give any instructions to inmates nor to urge them to a particularly fast working speed. All members of Farben as well as the employees of the construction and assembly firms, were forbidden to converse with inmates.

Work instructions had to be given to the Capo only, who then gave his instructions to the inmates accordingly.

Actually the working speed of inmates at the Auschwitz plant of Farben was considerably slower than that of the free foreign workers and above all of the German workers. This certainly can be said to be the result of the evidence. This fact has been confirmed by almost all of the 400 affidavits submitted by the Defense, and it has been pointed out that the expression "inmate tempo" was equivalent to a particularly slow pace of work.

The Prosecution was unable to present any evidence whatsoever



showing that the Plant management itself promoted or even tolerated an increase in the working speed of prisoners by coercive measures or similar means. In fact, the Plant management condemned such measures and for its part tried to make the prisoners voluntarily increase their output by introducing a bonus system and thus trying to appeal to the good will of the workers. The defendant Dr. Duerrfeld on the witness stand himself testified to these endeavors by the plant management and their success, and numerous affidavits submitted by the Defense confirm this testimony.

In rebuttal the Prosecution itself has now presented evidence showing that the administration of the concentration camps also advocated and supported the bonus system.

The content of these rebuttal documents - almost all are orders and directives of the SS- by no means contradicts the evidence of the Defense, but in reality amounts to a confirmation of the statements made by the defendant. For nothing is more natural than that in a certain situation various authorities occupied with the solution of the same problem should arrive at the same or similar proposals, and in fact the idea to increase the prisoners' will to work by giving bonuses is by no means unusual, but to the contrary something quite obvious.

But the rebuttal documents submitted by the Prosecution also show something else; namely that beginning with 1942 the agencies of the SS also put Security-Police considerations into the background and that more and more the idea prevailed that in the interest of a total utilization of labor and the increase of war production, an increase in the output by inmates could be expected only if they were treated decently and their will to work promoted by bonuses and similar measures. This open-mindedness finally was the reason why, after long endeavors, the plant management at Auschwitz succeeded in improving the general living conditions and working conditions of the inmates more and more.

(24)

The Productivity of Prisoners.

In regard to the work production of inmates, conditions were similar as in regard to working speed. If the working speed was in part considerably slower than that of the free workers, this is true in a much higher degree of the work output.

In fixing the production schedule for inmates, the plant management generally based its estimates on 50 to 70% of the productivity of free workers. Naturally these requirements varied according to the type of work. An inmate employed as a bookkeeper could, by proper preliminary training, be expected to perform just as well as a free worker. On the other hand, in the case of helpers and of heavy workers, the low degree of willingness to work, the partly existing lack of training, and the reduced physical capacity to be observed in some of the prisoners was given widest consideration. This is confirmed, in a manner excluding any reasonable doubt, by the extensive evidence material, which the Defense has submitted to the Tribunal in 18 volumes.

In this connection it merits emphasis that many prisoners volunteered to work at the plant on Sundays. This certainly would not have been the case if the work requirements of Farben and of the construction and assembly firms had in any way exceeded the capacity of the inmates and could not have been expected of them.

I now turn to:

(25)

The Work Conditions for Inmates at the Plant.

As a result of the evidence it may be stated that the inmates at the Auschwitz plant were not required to do any harder work than the free workers and prisoners of war. Of course it is unavoidable that in construction of such a gigantic plant, especially at the start of construction and assembly work, labors must be performed that do require a certain amount of physical exertion.

The carrying of cement bags is one such kind of work.

It would be wrong to assume however, that only inmates were required to carry cement bags.

The evidence has shown that free workers as well had to carry cement bags. Besides, this is a type of work which is performed every day everywhere in the world on construction jobs. Beyond that, the evidence presented by the Defense makes it clear that only a relatively small number of all those employed at the plant were called upon to do this work. Beginning in 1943 the transport of cement bags was discontinued altogether, the Plant management having in the meantime constructed huge bins and concrete factories, in which the cement was transported by mechanical means and mixed on the spot into finished concrete forms.

It was similar in regard to the laying of cables, which several witnesses for the Prosecution have stated was particularly strenuous. It is a fact that numerous cables were laid at the Auschwitz plant of Farben, but these cables, were laid in the same manner as any other work. As a matter of fact, there are certain jobs that cannot be done without the use of human labor. Also it is not true that the Plant Management of the I.G. at Auschwitz used only inmates for such jobs. Obviously free workers were employed in the laying of cables just as in the carrying of cement.



If inmates were assigned to these labors relatively frequently then this was, of course because these jobs could also be performed by unskilled workers. Besides, it was exclusively within the competence of the Labor Allocation Leader (Arbeitseinsatzfuhrer) of the SS at Camp IV and of the inmates employed at this office to determine which inmates were to be assigned to these work details. The Farben plant management had no influence upon that. The Labor Allocation Office of the plant management could merely give the Labor Allocation Leader at Camp IV the figure of inmates required for such work, without having any possibility of having the slightest influence upon the selection.

In this connection it appears indicated to refer to the fact that the Plant management of Farben at Auschwitz to an enormous degree replaced and facilitated physical work through the introduction of construction machines and technical aids of all kinds.

The evidence has shown that, aside from the already mentioned concrete factories, no less than 220 km of normal and narrow gauge railroad tracks laid, that 91 locomotives and 2,200 transport cars were used, and that apart from many other construction and assembly machines no fewer than 95 travelling cranes, 40 conveyer belts, 150 concrete mixers, 40 excavators, 80 assembly masts, and a large number of rotating derricks railway cranes, construction elevators, and similar machines were in use.

The Prosecution was not able to prove that the Plant management gave even one single instruction for inhumane treatment of prisoners or that it demanded work efforts of the prisoners that could not be expected from them.

(26) Breakdown of Inmates at the Plant.

The Prosecution alleges further that at the Auschwitz Plant of Farben numerous inmates collapsed due to the heavy work. This allegation is also incorrect. Naturally accidents may have occurred at a plant under construction that employed more than 30,000 workers, or cases of

inmates just like free workers who became sick on the job or who became incapable of continuing work due to some physical weakness that could not be recognized right away. However, in regard to this allegation too the Prosecution failed to present conclusive proof to the effect that the Plant management issued instructions which could have caused such breakdowns. Contrary to that, the Defense has presented extensive evidence to prove that the Plant management at Auschwitz tried again and again to employ the inmates according to their physical aptitudes and trade training, and that it had repeatedly submitted corresponding proposals to the Commander of Camp IV. Insofar as accidents at the plants are concerned, this much can be said, on the basis of the evidence produced: The prevention of factory accidents and the safeguarding of all employees against such accidents was within the responsibility of the Plant management, to which it applied itself with the greatest care from the beginning by issuing proper instructions (through lectures) and by constant supervision of all work by safety engineers.

If plant accidents could not be completely eliminated after all, this was because of the matter in general and because of the kind of work to be performed in the construction of such a huge plant. The evidence produced by the Defense gives an impressive picture of the efforts made by the plant management in this directive.

(27) The Abuse of Inmates in the Auschwitz IG Plant.

It cannot be denied that, at the beginning of the construction work at Auschwitz, inmates were beaten by Capos and SS-guards even in the plant itself. The defendant Dr. Duerrfeld himself, during testimony in his own defense, has given the reasons why it was not possible, at least at the beginning of the construction work, to eliminate such incidents completely. The decisive reason could be found in the fact that the construction chiefs at the Auschwitz plant of Farben and the foremen of the building and assembly firms had no right whatsoever to give orders to the Capos in regard to the treatment of the inmates. The building

and assembly firms as well as the Farben plant management itself had no alternative other than repeated remonstrations to the camp commander and the lodging of complaints against excesses which became known.

The evidence has shown that the plant management immediately contacted the camp commander in every case that came to its attention and demanded the abolishment of such excesses. However, above all, a strict order was issued by the building administration at the beginning of the construction work prohibiting corporal punishment or other abuses on any person working in the plant. This prohibition was generally known to all persons employed in the plant, and attention was called to strict compliance with this order by the plant management and especially by the defendant Dr. Duerrfeld himself during all conferences with the section heads and the representatives of the contracting and assembly firms, as on other occasions. Moreover, the building and assembly firms were even compelled by the plant management to sign a statement pledging themselves to point out this prohibition by the Farben management to their assembly chiefs and foremen and to insist that the order be complied with. The evidence before this Tribunal has shown that the plant management did everything imaginable in this respect in order to make any excesses impossible, and has shown furthermore that the plant management took the responsible persons to account when such excesses occurred. However, the evidence has furthermore shown that the number of such excesses continued to decrease and that during 1943 and 1944 they had practically ceased altogether.

The defendant Dr. Duerrfeld testified as a witness in his own defense that, in case of complaints about guards or Capos, the commander of Camp IV showed full understanding and supported the efforts on the part of the plant management to guarantee a correct treatment of the inmates. That the plant management was justified in believing these statements made by the camp commander is shown if only by the change of attitude in regard to the inmate problem which applied even in the SS ever since the Inspectorate of Concentration Camps was



incorporated into the Economic and Administrative Main Office. In this connection I should like to refer also to the order by the Chief of the Economic and Administrative Main Office, dated 8 December 1943, which was presented by the Defense as Duerrfeld Exh. No. 375, and in which beating, pushing or even touching a prisoner is expressly prohibited.

This same order imposed the duty on the camp commander to give weekly instructions to the Capos and guards about the contents of the order.

(28) The Witnesses of the Prosecution

In the frame of the evidence the Defense has submitted voluminous material to the Tribunal. Scores of witnesses have been questioned before this Tribunal who have testified about the working conditions in the Auschwitz plant of Farben. Moreover, a total of 400 affidavits has been presented in addition to numerous photographs, maps of the plant, graphic descriptions, and similar evidence. This evidence offers an exhaustive picture of the actual working conditions at the Auschwitz plant of Farben. As to the weight of this evidence, we shall express our opinion in a detailed trial brief which will be submitted to the Tribunal.

The testimony given by the witnesses of the Prosecution offers a picture which basically, as well as in regard to details, differs considerably from the description given by the witnesses of the Defense. In order to be able to appraise correctly the value of the evidence produced by the Prosecution, it appears to be necessary first to introduce a few basic comments: The "principle of pleading" is the decisive view in the proceedings before these Tribunals, contrary to continental European penal law, which is dominated by the "principle of examination". It is completely left to the discretion of the parties, what kind of evidence they want to present to the Court. The fact that, in view of the difficulties prevailing in Germany at present in regard to legal questions of the state, the Defense is in a

decidedly more disadvantageous position as compared to the Prosecution, does not require more detailed justification.

All documents captured by Allied troops, just to give an example, were in the hands of the Prosecution during the entire period of evidence taking.

The dangers involved in such a trial - and it is obvious that in trials of world-wide importance these dangers are considerably greater than in ordinary trials - must appear all the more precarious as the Prosecution, contrary to the position of the public prosecutor in a German trial, is not guided by the desire to find the real truth. In German criminal proceedings, for example, it is obvious that it is the duty of the public prosecutor to find not only the incriminating but also the exonerating circumstances, and furthermore arrange for the submission of such evidence which is in danger of being lost. The conception shown by the Prosecution before these Tribunals is an entirely different one. It submits exclusively that kind of evidence which is apt to incriminate the defendants. Witnesses who do not appear to be suitable for this purpose are not examined by the Prosecution, and the names of these witnesses are not disclosed to the Defense.

The dangers involved in such proceedings must necessarily be all the more grave as another principle is generally disregarded in these trials which ought to be a decisive component of all modern criminal proceedings, namely, the oral procedure and the directness of the proceedings. The submission of affidavits signifies a considerable limitation of this principle. The affidavits are taken by the trial parties themselves.

By applying the above-mentioned principle of procedure, the Prosecution obviously accepts only such statements in those affidavits as appear to incriminate the defendant. If the selection of the witness is exclusively made from the point of view of his suitability as a witness of the Prosecution, everything is omitted in the formulation of an affidavit which, as a rule, is done by a member of the Prosecution -

which could in any way serve as exonerating circumstances. Psychologically it is easily conceivable that such a witness will feel little inclination during the cross-examination to revoke or add to his previous statements, since otherwise he might expose himself to the charge of perjury.

Only by observing these basic arguments will it be possible to recognize the real weight of evidence expressed in the affidavits. This especially applies to the affidavits of the British prisoners of war who were employed in the Auschwitz Farben plant. As the evidence has shown, there were more than 1200 British prisoners of war working in the Auschwitz plant of Farben. The Prosecution has presented affidavits by 19 former British prisoners of war. It is obvious that in the selection of these witnesses only those were chosen who appeared to be suitable as witnesses for the Prosecution. Moreover, if one considers that all affidavits were formulated by the same interrogator, it cannot then be surprising that a picture of the working conditions in the plant resulted which must necessarily be a caricature, that last in view of the numerous conclusions contained in these statements.

This can be applied in a similar way to the Prosecution witnesses who worked in the Auschwitz plant of Farben as former inmates. As the evidence has shown, there were about 9,000 inmates quartered in Camp IV when this camp was fully occupied. From all these inmates the Prosecution has selected 18 from whom affidavits were presented to the Tribunal. Of that number, only two are Germans, who did not conceal their political attitude. One does not have to emphasize that these prisoners were selected according to the principles already mentioned.

In finding the real value of evidence from the statements of part of these witnesses, the fact must not be overlooked that several of these witnesses suffered a fate which, from the human point of view, would make a certain prejudice appear entirely comprehensible.



However, far more than half of these witnesses, who as former inmates were quartered in Camp IV and from whom the Prosecution has submitted affidavits, were of that kind of prisoners who, the so-called "prominent persons", directed the self-administration of the inmates in the camp. I have already mentioned that for an outsider it is hardly possible to get an even approximately correct idea of the power and influence of these prisoners. Above all, however, one fact must not be ignored in finding the real value of the testimony given by these witnesses:

In shaping the internal affairs of the camp and in settling all questions of the self-administration, the organizations of the latter authority were naturally dependent upon close cooperation with the SS. This fact is confirmed in all proceeding against guards and commanders of concentration camps and furthermore by the entire literature published so far. Nothing therefore appears to be more obvious than the attempt made at this time by these prisoners to put the blame for all unbearable conditions and deficiencies on an organization which maintained no direct connection either with the SS itself nor with the selfadministration of the inmates. Obviously, in the employment of inmates in industry, that is in every case the industrialist and entrepreneur by whom these inmates were employed.

Obviously, the fact ought not to be ignored, either, in appraising the statements of these inmates, that large numbers of them - if not most of them - are evidently advocates and supporters of an economic and social order and of a political program which is evidently opposed to a social order recognizing the freedom of the individual and an economic order based on free enterprise.

The fact that several allegations made by these Prosecution witnesses are unfounded may be exemplified as follows. The allegation was made by several Prosecution witnesses that inmates collapsed in the plant every day and that it was a daily occurrence to see dead inmates being carried back to the camp by their comrades. In rebuttal the Prosecution has presented the list of prisoners who lost their lives during the period from 16 November 1942 to 17 January 1945, either in Camp IV or in the plant itself or through other circumstances. This is Document NI-15295, which was introduced for the purpose of identification, listed by the Defense as Durrfeld

Document No. 471.

In our trial brief we shall discuss in detail the contents of this memorandum which was made in Camp IV by an inmate. Even at this early date I should like to point to the fact that the testimony given by the Prosecution witnesses is definitely refuted by the contents of this memorandum, which covers the period from 16 November 1942 to 17 January 1945, that is a period of almost 800 days. According to the entries therein, 76 inmates died on work details. Of that number, 57 died in 1943 and 16 in 1944. These numbers not only show that the working conditions in the plant constantly improved, but one can correctly appraise the real evidential value of these figures only if one considers the fact that apparently the author has also listed those inmates as deceased on "work details" who actually did not die in the plant itself but at any place outside of the camp or on the way to or from the place of work under the sole command of the Office of Armament Construction or the Commander of the anti-aircraft artillery. It would certainly be in contradiction to all experience in life if the author of these notes had not added to the list of persons deceased on work details the names of those in whose cases the precise place could not be determined.

Finally, attention is to be called to the surprising fact that not a single free German or foreigner of the 25,000 free workers in the plant was summoned by the Prosecution to appear as a witness.

The Critical Position of the Defense with Regard to Evidence.

In appraising all the material which has been submitted in evidence by Prosecution and Defense, the fact should not be disregarded that, contrary to the Prosecution, which in this respect had all facilities at its disposal, the Defense found itself in a decidedly critical position with regard to evidence. We have submitted evidence on this question also.



From this evidence it can be seen that it was only under the greatest difficulties that the Defense was able to establish contact with highly important former members of the staff of the Auschwitz plant of Farben. It is impossible for the Defense to travel abroad. Almost 25,000 foreigners were employed in the plant. For many of them a statement for the Defense involves personal danger. Witnesses who are abroad or in the Soviet-occupied zone of Germany could not be brought before this Tribunal.

These difficulties, however, existed to an especially high degree in the case of former inmates who were employed in the Auschwitz plant of Farben. Insofar as the persons concerned were political inmates these difficulties arose from the fact that the "League of Persons Persecuted by the Nazi Regime" forbade its members to testify as witnesses for the Defense.

The hearing of the evidence has also shown that members of the prisoners' organizations brought pressure to bear against witnesses who gave affidavits for the Defense in spite of this prohibition, to make them recall their statements. It is obvious that under these circumstances the factual requirements for ascertaining the truth can be regarded as present only to a limited extent.

Auschwitz Plant of the I.G. and Auschwitz Concentration Camp.

Inmates were employed in the construction of the new plant of Farben in Eastern Upper Silesia by virtue of an order of the supreme economic planning authority of the German Reich, namely by the Decree of the Commissioner for the Four-Year-Plan, of 18 February 1941, which has already been mentioned. This order was the foundation which served as a point of departure in all questions concerning the employment

of inmates. There existed no other connection whatsoever between Farben on the one hand and the Administrative Office of the Auschwitz Concentration Camp or Monowitz Labor Camp on the other. (Camp IV).. Naturally, the Plant management had to enter into negotiations with the administrative office of the concentration camp insofar as the implementation of the employment of inmates and the organization of their allocation was concerned. No one who considers the conditions without prejudice will be able to find anything unusual there - even if in contradiction to the experience of daily life he tries to see something suspicious even in completely natural occurrences. As a matter of fact, the Prosecution could not prove anything which even in the remotest way and in any respect might permit one to conclude that the connections between the plant management of Farben, and the camp went beyond business negotiations and beyond those required by the nature of things. That applies especially to the occurrences in Camp IV and the "selections" alleged by the Prosecution. In my opinion, on the basis of the results of the evidence one cannot even say with certainty whether such "selections" took place at all. Even if it might be true that inmates were shipped from Camp IV to Camp Auschwitz or Camp Birkenau, still the conclusion may by no means be drawn from the fact of this transport that these inmates were transferred for the purpose of extermination. It has already been pointed out repeatedly that the infirmary in Camp IV was planned merely for short-termed medical treatment - even if in fact numerous inmates were quartered there for months - and that actual bed treatment was supposed to be given in the base camp. On the basis of the evidence, it can further be regarded as proven that by virtue of orders of the Security Police as well as by virtue of orders of the

Administrative Office of the concentration camps, an exchange took place regularly between individual labor camps and also the various concentration camps. In this connection I refer to the order of the Chief of the Economic-Administrative Main Office dated 26 July 1942, which has already been mentioned and which the Defense has submitted as Exhibit 374, from which it appears that the prisoners had to be exchanged at least every half year. The plant management, therefore, must not necessarily have seen anything suspicious in an exchange of the personnel of Camp IV, even if such a systematic exchange had come to its knowledge at all. As a matter of fact, as the evidence has clearly shown the plant management had no knowledge of this, except for individual cases for which a reason was given. This exchange in the personnel of the camp might not be especially noticeable, for the reason alone that it apparently extended quite uniformly over a comparatively long period of time and the outgoing prisoners were more than offset by those arriving at the same time. As the hearing of the evidence has further shown, the plant management was regularly informed by the Camp Administrative Office only of the personnel strength at the time, without having it subdivided into departures and arrivals. The defendant himself only received the strength report from time to time every 2 weeks.

What the evidence showed to be the case for Camp IV applies to an even greater degree to Auschwitz Concentration Camp itself and especially to Camp Birkenau. In appraising this result of the evidence before this Tribunal, I do not have to specially emphasize what has already been ascertained in numerous other trials; namely that the concentration camps had in particular the so-called extermination camps were surrounded by an impenetrable wall of secrecy. The fact that one person or another in the vicinity of these



camps may have heard of some suspicious happenings or other in these camps by way of rumor does nothing to change this. Neither the defendant Dr. Duerrfeld nor any other member of the plant management learned anything about the extermination measures in Camp Birkenau.

Besides that, the following essential facts must be stated the Prosecution has produced no proof that the Plant Management in the Auschwitz plant of the I.G. knew anything about those measures. Above all, however, it was unable to prove that this plant management issued any orders which permit one to perceive any causal connection between the working conditions in the Auschwitz plant of Farben and these extermination measures. The subsequent attempt of the Prosecution to establish some connection, no matter how remote, by all possible means must on the basis of the result of the evidence be considered a failure.

The Legal Excuse of Necessity

Inmates were employed in the Auschwitz plant of Farben by virtue of the order of the Plenipotentiary for the Four-Year-Plan of 18 February 1941. I have already argued that no basic legal objections at all can be pleaded against the employment of inmates by industrial enterprises to whom they were assigned by the proper government agencies. However in case this Tribunal should not follow me in all the points of the legal trains of thought which I have advanced, the following might also be pointed out with reference to the question of the employment of these inmates which as a matter of proof entailed greater expenses for the industrial enterprises involved than the employment of free workers would have done.

The order for the construction of a fourth Buna plant was given by the Reich Ministry of Economics toward the end of 1940. At this time the German Reich and its Wehrmacht were

9 June 1948-M-MSD-4-7-Stewart (Katz)  
Court VI, Case VI

approaching the climax of the war. No further words need be lost in dwelling on the importance of Buns and highest engine fuels in a modern total war. The Prosecution mentioned this both in the Indictment and its Opening Speech, and as a matter of fact it is absolutely impossible to wage war in the 20th century without these two important raw material or their derivatives.

In a brief which will be submitted to this Tribunal I have examined the legal consequences resulting from this situation of the German Armed Forces and the German military economy, with regard to the assumption of a national emergency. The result of this investigation is as follows: A national emergency is an emergency, not to be relieved in any other way, concerning vital interests of the state and public body. Insofar as acts are permitted on the basis of it, one must not only assume grounds which exclude guilt, but they even become genuine grounds for justification.

Outside of this general emergency, the literature of international law also recognizes a peculiar war emergency. By this self-defense and necessity also permit actions which are contrary to military law, which, therefore, would in themselves be contrary to international law. Different from self-defense and necessity within the meaning of international law is, however, the military necessity (war reason) (Kriegsraison), which in itself does not justify violation of the laws of war. Necessity and military necessity are, however, distinct conceptions. Necessity, in which the survival and potential development of the state in distress are at stake, justifies by general principles, recognised by the internal laws of all civilized nations, the violation of any international rules, including the legal provisions of military law. In the application of the concepts of self-defense and necessity as recognized in penal and international law, any illegality of violations committed is excluded, if the state finds itself in a situation which could no longer be relieved by the application of other means, and which jeopardizes its existence.

Not only the German Reich and its Armed Forces found themselves in a state of necessity, however, but also these defendants.

Within the framework of this trial it is not necessary to explain in detail that, at least after the beginning of the war, an order of the government was in the public life of Germany absolutely



binding and that a refusal to execute an order concerning the vital interests of the state involved immediate danger to life and liberty of the individual.

A refusal, to employ inmates, disobeying thereby an order of the Plenipotentiary for the Four-Year Plan of 18 February 1941, could heretofore not be seriously considered. Least of all could this be done by a construction and assembly manager who, like the Defendant Duerrfeld, was not even a member of the Vorstand of the IG, and had only to execute the orders he received from his superiors. The ground excluding illegality by reason of duress has been recognized in favor of an individual by several Military Tribunals in the trials conducted in Nuernberg. In this connection, I refer to the verdict of Military Tribunal II in Case No. 2 against Erhard Milch, and to the verdict of Military Tribunal IV in Case No. 5.

#### Action on Orders

The Defendant Dr. Duerrfeld, in his capacity as the construction and assembly manager during the erection of the Auschwitz plant, found himself in a situation no different from that of a soldier at the front who has to execute an order given to him. The military laws were for him no less cogent than for a member of the armed forces. I have expounded the legal consequences resulting from this state of affairs, in our brief which will be submitted to this Tribunal.

I now turn to the:

#### Personal Responsibility of the Defendant Dr. Duerrfeld.

Dr. Duerrfeld's position within the plant management of Farben may be seen from the organizational scheme of these works, which was submitted to this Tribunal by the Defense. Furthermore, I have already emphasized that the heads of the main sections within the plant management were not appointed by the Defendant Dr. Duerrfeld personally. The same applies to other important section heads. However, the Defendant Dr. Duerrfeld, during the entire period of his activity at Auschwitz, had

no reason to doubt the reliability of his colleagues, who were in part his equals, in part his subordinates.

On the other hand, it is a matter of course that in a plant in the process of being built, in which in 1944 more than 30,000 workers were employed, the construction and assembly manager cannot be held responsible for every mistake of a subordinate agency and for abuses committed contrary to express and clear directives of the plant management, by foremen or master mechanics of Farben or of the contractor and construction firms. The question of the guilt of this Defendant must be judged exclusively by ascertaining whether or not he gave any orders or issued any directives in contradiction to any of the generally recognized principles of humaneness, and which in themselves satisfy the specifications of a criminal statute. Such directives were not issued by the plant management, as the evidence has proved beyond a shadow of a doubt. Also one cannot think of any act which the Defendant Dr. Duerrfeld or any other member of the plant management failed to do, to which he would have been in duty bound, and the neglect of which would have been the cause of a consequence disapproved by the law. The Defendant Dr. Duerrfeld, in his capacity of construction and assembly manager, did everything reasonably to be expected of him considering all the circumstances and especially the conditions caused by the war, as the evidence submitted by the Defense shows unequivocally. As a matter of fact, the Defendant Dr. Duerrfeld kept thinking day and night how to make working and general living conditions as favorable as possible for all the workers employed in the plant. The witness Dr. Braus, himself a member of the plant management, rightfully declared before this Tribunal: "It is a great tragedy that this man of all people is the object of charges which constituted the subject of this trial."

If the Tribunal, in evaluation the evidence submitted by both parties, applies the principles which are part of the procedural law of all civilized nations, and which are generally known as the principle of

"free weighing of the evidence" ("freie Beweiswurdigung"), the outcome of this trial, as far as it is a question of the guilt of the Defendant Dr. Duerrfeld, cannot be in doubt.

I, therefore, move to find the Defendant Dr. Duerrfeld  
not guilty

of the charges under Counts I, II, III, and V of the Indictment.

THE PRESIDENT: The Tribunal will hear Dr. Aschenauer on behalf of the defendant Gattineau.

DR. ASCHENAUER (Counsel for defendant Gattineau):

Mr. President! Honorable Judges!

A question which must be raised after a catastrophe is that of its causes; for years the Prosecution has been submitting to the Courts the query: "What led to the Third Reich?" Inherent in this question is the establishment of blame for the Second World War. Various theories have been brought forward by the Prosecution. At one time the generals helped Hitler to power, then again it was the officials and diplomats. In other trials, as in the one under discussion, it was the German industrialists. In viewing and estimating as a whole the picture which the Prosecution endeavors to present, the large-scale attempt to charge the so-called German leading class with the sole blame for the events of 1933 to 1945 becomes apparent. Such an attempt was made once before in modern history; in 1919. More than 20 years had to elapse before, in the archives of the Belgrade government, was found the document which was decisive in clarifying the question of war-guilt in connection with the First World War. In his written confession dated 28 March 1917, the Serbian Colonel Dimitrijevic avows that, in agreement with the Russian Military Attaché, he induced Rade Malobabic to organize an information-service in Austria-Hungary. He confesses in the following words: "Before I arrived at the final resolution that the murder should be committed, I asked Colonel Artamanov for his opinion..... Artamanov answered that Russia would not fail us". It is also clear from this confession that



9 Jun 48-48-1B-55-Schwab (Int. Katz)  
Court No. VI, Case No. VI.

the Russian Military Attache<sup>1</sup>, Colonel Artamanov, supplied the funds to pay the murderers of Sarajevo.

More than two decades had to elapse before this question was clarified. How many years will pass before the true background

of the years 1933 to 1945 is revealed?

The rejection by the Court by the objection raised by the Prosecution to GATTIEAU Exhibits No. 136 and No. 145 must be viewed in the nature of a decision implying that the isolated consideration of the Nuernberg defendants' guilt in the events of the "Third Reich" is contrary to reason. - This impression is rendered more intensive in contemplating the nature of the documents which have been accepted by the Court in Document Book DUESSFELD No. XVIII.

For the impartial examiner of the question: "How and why was there a Third Reich and a Second World War?" this also indicates a delving into the events leading to the development of National Socialism. Unencumbered by prevailing prejudices, this remarkable historical epoch, which might be called capitalism, should be viewed comprehensively and with the full understanding that we have reached a turn in the tide of events, outward signs of which are the so-called capitalistic crises. Up to the First World War, they could be set down as growing pains. After the First World War they developed into regular functional disturbances. Two major crises, those of 1920/1921 and 1929/1932, brought about the downfall of economy.

1929: What took place on the world markets was an event without precedent. At the turn of the year 1929/30, prices finally sank to great depths.

To this must be added the Russian problem as one of economy. Bolshevist, state-capitalistic Russia more and more developed into an actual counterpole to the Western system built up on private capital. Eliminated as a world market on the one hand, Russia on the other hand appears on the world's money markets as a counter-speculator in the world economic crisis. In this connection it may suffice to state that a Russian offer of 5 million bushels was sufficient to disorganize the whole Chicago wheat market, which has an average daily turnover of 100 million bushels. As an additional example I may mention Russia's attitude on the platinum market, as also the question of Russian dumping. This may suffice

as an outline of the general economic conditions during the period of 1920 to 1930.

The German nation is particularly concerned with the consequences of the Versailles Treaty and its arbitrary boundary decisions, violating the sovereign rights of nations. In his book "Europe without Peace" the former Italian Premier Francesco Nitti writes as follows - I quote:

"After the victory of the Entente, the microbes of hate have taken their characteristic developments: national greed, imperialism and the mania for conquest. The vanquished peoples - among them Germany - have had a peace forced upon them which is tantamount to a prolongation of the war. The total loss for which Germany has the Treaty to thank exceeds anything that can be foreseen; it may only be looked upon as an intentional method of bringing about the destruction of an entire people. Considered from a moral standpoint, the treaties recently concluded are an unspeakable act of retrogression; for with them the culture of Europe has regressed to a state which, it was believed, had been left behind many centuries ago. Furthermore, they constitute a danger. If everyone abandons himself to a degree of vengeance which he believes is his due because of the wrong he suffered, if it is kept in mind that the vanquished of today may be the victors of to-morrow, into what an abyss of brutality, immorality and degeneration will Europe finally be plunged?" End of quotation.

Whenever serious complications arise in connection with grave functional disturbances of an organism, judicious medical authorities are prepared for the worst. This complication in the capitalistic order existed as a result of the Versailles Treaty; namely German reparations. Dr. Gustav Cassel, of Stockholm, in his thesis, "The World's Monetary Problem" writes as follows, I quote:

"The effect of the reparations is extremely unfortunate and damaging: it is possibly the greatest obstacle to the economic recovery of the world" End of quotation.

It was the fate of the vanquished that Germany already had to pay heavily at the time of the Armistice at Compiègne. Gold, locomotives, and



railway coaches rolled across the frontier; the whole commercial fleet was surrendered; right - such was the fate of Athens, Carthage Alsace-Lorraine was surrendered; Very well, such had also been the fate of France in the long, century-old tragic struggle for the Rhine. The Eastern provinces and the colonies were lost - for this too, examples may be found. Twenty billion Marks worth of German property abroad were seized and liquidated - here I hesitate. This is an event without precedent; France, in 1871, sold part of her property abroad voluntarily in order to pay her war indemnification; but for Germany this only marks the beginning of her real war indemnifications, called reparations. They are based on approximately the following reasoning: First of all, Germany destroyed whole areas and must pay for their reconstruction; secondly, the victors in this holy but expensive war have contracted serious debts which must be charged to Germany as the vanquished. And thus the struggle to meet its obligations begins in Germany, a struggle which becomes decisive for the year 1933 and which is best circumscribed by the names of Dawes and Young Plans. Its characteristics are debts, impoverishment, excessive foreign influence, and a selling-out. The English paper "Manchester Guardian" in 1931 properly describes the situation in the following dry terms: - I quote: "....It is a phantastic and horrible dream to weaken Germany through an onerous burden of reparations which keeps this country constantly on the verge of collapse and bankruptcy. Such a policy is bound to fail, not merely in view of the revolt of the rest of the world against a grotesque situation but because of resistance by the German nation itself." End of quotation. In passing, the German East and the minority problem should also be mentioned. That chauvinistic statements by Polish and Czech politicians had to cause a reaction is only natural. I need only quote a few passages to make this comprehensible.

The Polish paper "Gazeta Odanska", No. 82, dated 11 April 1926, writes as follows; I quote:

"We can with facility arrive at an agreement with Russia and direct

Russia's thirst for expansion towards Delhi and Calcutta, while we ourselves steer a course for Koenigsberg. Poland's natural boundary in the West is the Oder .... our present slogan is: From Stettin to Polangen. Germany is defenseless." End of quotation.

Clearly and distinctly the "Posener Dziennik", during the same period rejects any reconciliation with Germany - I quote: "The only relationship possible between us and them (the Germans) is that of hate and combat. The Germans who think that a policy of honest, even important concessions could alter this fundamental relationship are mistaken." End of quotation.

In this connection another quotation of the Czech Minister Radin: "According to the peace treaty we have the right to arrange our affairs in such a way as if our nationalities did not exist at all. We do not need to negotiate or to compromise with anybody." End of quotation.

In economy and politics, the German Reich, weakened and struggling as a result of the Versailles Treaty, was located between two central forces, namely the Western capitalistic creditor states and Bolshevik Russia with its expanding influence. It is understandable that a movement had to come into existence under the conditions described.

The new ideas that were assailing Western Germany were of a marked national and social character. On the one hand there was the "West", comprising the entire complex of capitalistic mentality which, in a continuous development of events starting from the renaissance stresses free trade, the gold standard, world trade, an international merging. On the other side there were the vague strivings of new ideas - borne of a material mental attitude - which, due to the wideness of the space and the depth of the movement, everywhere assumed different, and apparently unrelated forms, such as social adjustment, liberation from debts, from "the slavery of interest payment", doubts about gold and monetary values, the right to work and - above all- to live, the grouping together of national folkdom, economy for the supply of all requirements, authority of the state, efforts

to obtain "national economic space" ("Lebensraum") Between the two centers lay "the intermediate Europe", above all Germany, pulled about by both sides, swaying about without support, disunited. The cleavage affects both the people and politics. Passionate discussions take place on the question for which side one should decide, all the more so as Germany - being the biggest debtor country on the basis of the Versailles Treaty - was exposed to the strongest influences in the struggle of these forces. In the "Deutsche Rundschau", edited by Dr. PECHEL, former Reich Chancellor Dr. Heinrich BRUENING published an account of the development of the political situation in the years 1930-1933. BRUENING no doubt pointed out many things which were unknown to us. The important point of his account is and always will be his recording - without making any accusations - of the unfortunate sequence of political events in Europe and the world which caused National Socialism to gain power. BRUENING spoke very clearly. However, his candid speaking remained without response - except for Stempfer.

In this connection I could discuss how National Socialism was also supported in the West. I had before me the special publication "Les Marchands de canons" by Crapouillot, which reads as follows - I quote:

"The Hitler movement was also financed... by Pintsch, a Berlin firm controlled by Vickers, which kept an agent in the headquarters of the agitator from the very first day." End of quotation.

I could speak of reports sent by the Embassy in Rome to the Foreign Office around 1930, concerning foreign payments to the NSDAP. I could also speak of the assistance rendered by Sir Henry Deterding, Hearst, and Rothermere.

I could also raise the question which Ladislav Farago put under discussion in a New York paper on 2 November 1938, namely: What policy in regard to Hitler was decided upon by Montagu Norman in the spring of 1934, in company with Sir Alan Anderson, partner of Anderson, Green & Co.; Lord Stamp, President of the LMS railway; K. Shaw, president of the P. and O. steamship line; Sir Robert Kindersley; and Charles Hambro. In this



connection, however, I should not refrain from mentioning that, as was revealed by the IMT trial, Sir Henry's support was not intended so much for Hitler. Since, however, no uniform and direct line is given here, and since one cannot speak of a decisive causal connection with the origin of World War II, I will only establish the given facts of the matter.

In 1930 Alex Radé published an "Atlas for Politics, Economy and Labor Movement" through a Communist publisher in Berlin and Vienna. One of his maps illustrated the diplomatic relations of the Soviet Union with the rest of the world. According to this portentous announcement the reader expected to learn of a small mesh network of connections and ties spread over all parts of the world. Instead of this, the text started with the words feebly - I quote:

"Even after its ten-year existence, the foreign political position of the Soviet Union is still extremely difficult." End of the quotation.

In fact, the red of the USSR only stained the outer fringe of Mongolia and Tana Tuva, both its official allies. A slight tinging, however, was also discernible in the "revolutionized national" states, among them the German Reich.

The inclusion of the German Reich in its sphere of power was one of the most important aims of the Soviet Union. For this reason, revolts instigated by the East broke out in various parts of Germany in 1919, 1920, and later. These advances of the Bolshevist world revolution against the West collapsed. The rulers of the Kremlin drew their conclusions from these experiences. They were convinced that it would be difficult for them to bolshevize Germany by the direct method, i.e. by Communist revolts, unless the economic situation in Germany became worse and led to a catastrophe. Therefore they changed their tactics. It is true, they supported the Communist Party of Germany on the one hand, yet they also started to include German Nationalism in their plans. At first they tried to initiate discussions with important German circles through the medium of trade politics. To the German partners the economic prospects

were painted in bright colors. After the conclusion of the Rapallo Agreement, an agreement was then arrived at between generals of the German Reichswehr - as far as they were concerned with foreign policy - and of the Soviet Red Army, which had to choose cooperation. It is a fact that on the part of Germany, arms - prohibited by the Versailles Treaty - could be tested and produced on Russian territory. In addition to this, close cooperation was reached in regard to questions of training the Red Army.

In the course of the IMT trials, I visited one of the responsible men under whose auspices this cooperation was started. To my question of why Germany acted in this way, he replied: "The Versailles Treaty completely isolated us from the rest of the world. We were grateful for every possibility offered to us by which we could break through the political and economic isolation". End of quotation. At that time he was not aware of the consequences of this policy.

The Tribunal has accepted Exhibit No. 136, from which it is evident that prior to the decisive election of 14 September 1930, forty million gold marks from secret Reichswehr funds were placed by General von SCHLEICHER at the disposal of Hitler for financing the Party and the electoral contest at Stalin's request. It is apparent from the exhibit that by supporting Hitler, Stalin expected the German policy in regard to foreign and military to become very active.

When I had this document before me, I was surprised at this very clear Russian intervention on behalf of Herr Hitler. However, as time went on, I received more evidence to the effect that Moscow not only failed to prevent HITLER's seizure of power, but actually supported it. I came upon publications which were the outcome of Russian agents' reports, and STAMPFER's affidavit came into my hands. Undoubtedly, the High Tribunal will contend that these are cumulative documents. But they leave no doubt that Exhibit No. 136 shows the actual political line leading to HITLER's seizure of power and the Second World War.

It will be asked why this was done.

On 27 April 1947 Lord HANLEY wrote in the Sunday Times under the heading "Stalin's Mein Kampf" - I quote:

"All over the world people are asking why the Russians, wonderful allies during the war, are not cooperating better in peace-time.

The solution of this riddle is to be found in Stalin's book, "Problems of Leninism". Stalin foresees three revolutionary stages:

The first covers the time from its "conception" in 1903 up to its birth in October 1917. The second phase from 1917 onwards was dedicated to the consolidation of the new regime and its development as a starting point for the overthrow of imperialism throughout the world..... This was not a short-term policy. Lenin describes it as a "whole historical epoch", and Stalin adds that it would be "filled with civil wars and external conflicts, incessant organization work and economic reconstruction, advances and retreats, victories and defeats." End of quotation. The support of Hitler and the KPD (Communist Party) comes into this period. It is significant that the NSDAP and the KPD both pursued the same negative line regarding the Weimar Republic. In Germany's domestic affairs Moscow could count on civil war and chaos by supporting the two extremist parties. But if this calculation did not work out, an ace of external politics would be played, which to the Kremlin meant war and the subsequent collapse of the political and economic order in Central Europe.

At an earlier point in my thesis I have quoted the sentence spoken in 1930: "The Soviet Union's position in foreign politics remains extremely difficult even after 10 years of existence." End of quotation.

In Hitler's seizure of power, Moscow expected to find an opportunity of introducing a new phase for its foreign relations, and thus to gain new platforms for inner-political Soviet infiltration. In anticipation of forthcoming events in Germany, a Polish-Soviet non-aggression pact was signed on 25 July 1932, which was the prerequisite for the French-Soviet non-aggression pact of 29 October 1932. Ever since, Foreign Commissar LITVINOV appears regularly in Geneva, though not yet as representative of a member state. Nevertheless, within two years he has managed to be so



The admission of the Soviet Union into the League of Nations and the German-Polish rejection of the Eastern Pact were the prerequisites for the French-Soviet protocol of 5 December 1934, the de jure recognition of the USSR by Prague, and Czechoslovakia's joining this protocol on 11 December.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

The French-Soviet pact was accordingly concluded on 2 May 1935, and on 16 May Benes and Alexandrowski signed an identical pact in Prague. On this basis it was easy for the Soviets, with the aid of the Quai d'Orsay, to bring about, through Ambassador Potemkin, the exchange of diplomatic representatives with Belgium, which, together with Switzerland, Yugoslavia, and the Netherlands had only the previous September protested against the admission of the USSR into the League of Nations and refused to enter into relations with her. Just after that, on 26 August 1935, Potemkin's mediations, via Paris, resulted in the appointment of a Soviet Ambassador to Luxemburg also.

These diplomatic opportunities for the Soviet Union were the outcome of Hitler's accession to power and of the policy expected of him by Germany's neighbors. A further inevitable consequence of Hitler's accession to power, so far as Moscow was concerned, was that the Czechoslav movement and the Kremlin drew closer to each other, inasmuch as Czechoslovakia abandoned the principles of Kramar's romantic Slav policy. The outward manifestation of this is the Soviet-Czech alliance ratified on 16 May 1935, which for the first time gave the Kremlin access to the heart of Europe. Today we grasp the significance of that year 1935, when we reflect upon the events of 1948, and see how smoothly the Kremlin's calculations worked out.

That the Comintern was aware of the significance which its position assumed for Czechoslovakia in 1933 is proved by Gattineau Exhibit 146. It was for nothing that the present Secretary General of the Communist Party, Slanski, emphasized — I quote:

"The Communist Party of Czechoslovakia is conscious of its international responsibility towards the international proletariat. It put before the proletariat the perspectives and goal to make Czechoslovakia a solid

bulwark of the Soviet Union, a bastion and focal point of the proletarian revolution in Central Europe. "End of quotation.

Not for nothing did "Rude Provo", the leading Communist paper, write (Gattineau Exhibit No. 146) - I quote:

"We Communists advance imperturbably toward our destination, the Soviet Republic, which will be presided over by Klement Gottwald.

In the conviction that the interests of the proletarian class struggle and the success of the proletarian revolution call for the indispensable precept that in any country only a united mass of workers may exist, the Communist Party will be given the order to seize the initiative in quest of this unification." End of quotation.

The phase which, in connection with Hitler's accession to power in 1933, led to the Second World War or so-called "second imperialistic war" in 1939, has been dealt with in the BS State Dept. publication "Nazi Soviet Relations", so that I need not elaborate thereon within the thesis "Background of Hitler's accession to Power".

It was necessary to give this sketch of political developments, in order to enable us to examine the assertion of the Prosecution that Farben concluded an agreement with the NSDAP which was the basis for the outbreak of the Second World War. Let me in general refer to the thesis of Justizrat Dr. Rudolf Dix. For my part, I wish to ask only this: Does the Prosecution really believe that this accusation is justified, in view of the fact that in 1926 the German and French potassium industries combined, that on 30 September 1926, under the presidency of Dr. h.c. Mayrisch (Arbed Luxemburg) the Internationale Rohstahl-Gemeinschaft came into being and that in 1927 the chemical industries of Germany, France, and England concluded similar agreements?

I shall now deal with the "conspiracy" count, insofar as it concerns my client Dr. Gattineau. It appears that the Prosecution itself lacked confi-



dence when making the assertion that under the direction of a Bosch and a Duisberg, closest cooperation was achieved between IG Farben and Hitler. Only thus can we explain the fact that they submit an in itself irrelevant document to show that Dr. Carl Duisberg supported the Winter Relief Fund. It is an old-established fact: In the search for artificial arguments one frequently makes mistakes. In this case the presentation of the evidence showed that the Prosecution had made a little slip and mixed up names; Dr. Carl Duisberg was mistaken for Dr. Curt Duisberg.

It is beyond doubt that the aim to shift Duisberg and Bosch, in other words the IG leaders, into the political track of the NSDAP can never be attained. In his book "Adolf Hitler, Age of Irresponsibility, ("Adolf Hitler, das Zeitalter der Verantwortungslosigkeit", published in 1936 by Europaverlag in Zuerich, Konrad Heiden says - I quote: "Incidentally, the three big industrialists, who can claim the most solid and mighty accomplishments during the post war years, namely Carl Duisberg and Carl Bosch of the IG Farbenindustrie and Carl Friedrich von Siemens, chief of the concern of the same name, did not support Hitler, but opposed him". End of quotation. In his direct examination Dr. Cattineau drew the following picture of Duisberg - I quote: "As early as 1931 he proposed in a great speech to tackle the problem of European economic cooperation from the practical side and to prepare for an European customs union by working first of all for an understanding in Central and Southeast Europe, and then for an economic understanding with France and the Western European countries." End of quotation.

It stands to reason that this man, who advocated economic ideas of this kind should adhere to a policy of arbitration and understanding with France. It is also clear that politically he had to be an opponent of Kirdorf, Hugenberg, and Thyssen. His rejection of the Hraburg Front, formed with the of-

fective support of Hugenberg and Schacht, which is an important milestone along the road to Hitler's accession to power, is not surprising. Duisberg's course remained clear and constant. The man who, in June 1927, is one of the most notable figures in the negotiations attended by the British Minister of Transport, Ashley, and leading representatives of British economy, is unable, from the start, to see in Hitler a statesman fit to steer the fate of the Reich. Thus he writes as follows to Dr. Schmidt-Pauli, who in 1931 tried to interest him in the Party - I quote:

"You will learn from personal experience what it means if ever this party should come to power."

In an affidavit, (Gattineau Exhibit No. 10), Dr. Kalle describes Bosch as the venerated spiritual leader and the pride of Farben. This again invites the question: What was the attitude of this man who was the Farben leader until 1940 toward foreign politics and Hitler? The said affidavit discloses that Bosch was greatly interested in a German-French understanding, advanced the foreign political cooperation of Stresemann-Briand and supported Count Coudenhove-Calergi's Pan-European movement, which was rejected by the NSDAP, but which still plays a part in the efforts to attain European union today. We read with profound emotion the affidavit of the former president of the German peace delegation to Versailles, Freiherr Dr. Kurt von Lersner, who often met Geheimrat Bosch between 1929 and the fall of 1939. Freiherr von Lersner writes - I quote:

"His love for peace - I could almost say his "peace-obsession" - ran like a red thread through all our personal and political discussions. .... We both realized clearly that an honest Franco-German agreement was the safest guarantee for peace. That is why he cooperated untiringly in all Franco-German dealings, the purpose and aim of which was Franco-German unity. .... Carl Bosch's attitude toward Hitler and the National Socialist Party can perhaps be best recognized through the shattering criticism

which he related to me after his first meeting with Hitler: "This man Hitler is nothing, absolutely nothing. It's all a pure fraud." .... In the course of the following years Carl Bosch repeatedly told me : "Hitler will ruin us all. I hope that at least he's not so stupid as to start a war. One would think that a man who went through the World War as a corporal, would at least refrain from bringing renewed misery and horror of that nature into the world; ,..... The persecution of the Jews is an outrage and a disgrace which will revenge itself bitterly." ..... Peace, peace, and once more peace is the alpha and omega for us and for the whole world."

End of quotation.



It is inconceivable how the Prosecution could have thought of the conspiracy idea. Alone the personalities of Bosch and Duisberg, who guided the fate of Farben beyond 1933, should have made them think. Every reasonable economist considers peace the prerequisite for prosperity. This conclusion the Prosecution would likewise have reached if they had considered the problem from that angle. Paul G. Hoffmann rightly said in November of last year, i.e., 5 months before he was appointed administrator of the ERP: (I quote):

"Wars and international conflicts may result in feverish booms or even apparent prosperity, but true wealth, enjoyed by the whole nation, can only be gained through peaceful development and international cooperation. For this reason we are convinced that the preservation of peace and the development of international trade are the sole decisive factors for achieving true prosperity and a higher living standard for all." End of quotation.

Under these circumstances, and even quite apart from Gattineau's political convictions, there was no room left for him to have acted as intermediary in a conspiracy between Farben and Hitler. It is absurd to assume that he could have done this in the lifetime, of two such prominent economic leaders as Carl Duisberg and Carl Bosch.

Who was Dr. Gattineau?

1928: Scientific assistant in the secretariat of Geheimrat Duisberg in Leverkusen. From 7 September 1932, on chief of the Economic Politician Department (WIPO) consisting of Press Department, Trade Political Bureau Berlin, and the so-called Commercial Economy Center in Frankfurt. In his affidavit, (Gattineau Exhibit No. 2), University Professor Dr. Konen, after 1945 Minister of Education in Northern Rhine-Westphalie, says about Dr. Gattineau's attitude in the years prior to 1933, - I quote:

"Especially during the years that I was twice Dean of Bonn University, I had a great deal to do with Dr. Gattineau as deputy of Privy Councillor Duisberg. I knew from hearsay that in his student days he had for a time belonged to a Free Corps, but he was certainly not the type of the "Freikorpskämpfer" ("Free Corps fighter"). On the contrary, he always impressed me as an open-minded person, nature beyond his years and moderate in his political utterances; at any rate during the years that I knew him, he warmly and from innermost conviction supported his chief's views and political opinions. Our talks never gave me the impression that the former Free Corps fighter had become a Nazi or even a war politician." End of quotation.

Gattineau Exhibit No. 33 reveals that Dr. Gattineau was a member of the conservative Volkspartei (People's Party) until it was dissolved, and when he ran for the Reichstag in the Düsseldorf division in 1932, which led to grave conflicts with the NSDAP.

This man is considered by the Prosecution to be a man with political connections. How little there is to these assertions was shown during the presentation of the evidence. The defendant's circle of acquaintances among the so-called National Socialist hierarchy is insignificant and dangerous to him.

He is personally acquainted with Professor Haushofer, who read geography at the Ludwig University in Munich - Gattineau attended Professor Haushofer's lectures; he knows Hinkel, later Reich Culture Trustee, from the Oberland League, and Bilgeri from his student days. That is all up to 1933. It seems that the Prosecution regards the Oberland League as a kind of predecessor of the NSDAP.

The inaccuracy of this assumption may be seen from Dr. Friedrich Weber's affidavit (Gattineau Exh. No. 31). The Oberland League was a product of the post-war period. During the period of the inflation and after the Upper-Silesian Free Corps struggle, one of its most important, specially emphasized

aims was the maintenance of Reich unity and the strengthening of the idea of a united Reich. Hence the fight against all separatist aims from within and all attempts from without to detach territory from the Reich. On the other hand, the League took a firm line against Communist attempts to overthrow the government from the beginning. The independence of the Oberland League from other parties, the fact that Free masons and half Jews were members and even occupied leading positions soon lead to friction with the NSDAP, which, in 1926, forbade its members to belong to the Oberland League. After this time the attacks of the National Socialist press on the League increased. In May 1933 it was dissolved and suppressed by the National Socialist government.

After 1933 Gattineau was appointed an honorary SA officer by Roehm, without being a Party member. He met Roehm three times and talked with him about the economic possibilities of an understanding with France, the necessity of an understanding between employers and workers and about Schacht. Dr. Gattineau never held office in the SA. Apart from Roehm he also got to know the following SA Leaders between 1933 and 1934: Schreyer, Ritter von Krauser, Schnellhauber, von Detten, Bergmann, Reiner, and Ernst. Of all those leaders, only Schreyer, Reiner, and Bergmann survived 30 June 1934. All the others were shot.

The political attitude of Dr. Gattineau was demonstrated by a number of affidavits. Professor Arthur Brant of Toronto University describes the defendant as a liberal person in whose house free discussions were held.

He points out that no discrimination was made against Jews who were members of the sports club run by Dr. Gattineau (Gattineau Exhibit No. 44).

The affiant Ingeborg Kunhke, who was the defendant's secretary from 1 January 1933 to 31 December 1935, attests to the fact that people holding a different political opinion were not only employed but even



hired by his department. (Gattineau Exhibit N. 53) Lisolotte von Zuerowski emphasizes that Dr. Gattineau rarely wore SA uniform from November 1933 to 30 June 1934 (Gattineau Ex. No. 73). Hans Schaeven, who was together with Gattineau nearly every day, sums up his political attitude in one clear sentence: he, Schaeven, was always under the impression that Dr. Gattineau rejected Hitler's methods for reasons of political and economic common sense, as well as for moral reasons. The affiant continues, I quote:

"The matter did not end with Dr. Gattineau's opposing attitude alone. As far as he himself was able to make decisions, he surrounded himself as chief of the Economic Policy Department (WIPO) of Farben with co-workers who were anything but followers of the National Socialist regime. He kept me, for instance, as his secretary even after the seizure of power, although he knew that I was a radical opponent of National Socialism and was in contact with the German resistance movement. He gave aid to members of the German resistance movement as far as was in his power and under considerable risk to himself. As examples I quote: a) the Burlage case Dr. Maximilian Burlage, member of the state legislature for the German Center Party and Oberregierungsrat (Higher Governmental Counsellor) in the Prussian Ministry of Agriculture, had been dismissed from his office in 1933 because of "political unreliability". Gattineau used all his influence to the effect that Dr. Burlage was permitted to work in the Economic Policy Department of Farben. I know that Dr. Burlage, who at that time had financial difficulties, received financial aid at the instigation of Dr. Gattineau.

b) the case of Peter Schaeven. When Peter Schaeven, the Secretary General of the Center Party in Cologne (at present Secretary General of the CDU, Chairman of the Municipal Council of Cologne, and member of the District Legislature), lost his position as a result of the dissolution

of the Center Party in 1933, Dr. Gattineau, on his own initiative, furnished considerable sums of money which enabled Peter Schaeven to keep going and to tide him and his family over the time of his unemployment and political persecution.

c) Support of non-Aryan journalists.

In his capacity as chief of the press office of Farbon, Dr. Gattineau as far as I remember, gave material aid to Jewish journalists during the first period after the seizure of power by giving them the opportunity to assist anonymously in the work which had to be done by the press office." End of quotation. (Gattineau Exh. No. 72)

In view of such an attitude it is not surprising that Dr. Gattineau supported the Elsa Brandstroem endowment and became a member of a circle hostile to the NSDAP, the Hegemann circle. During the whole National Socialist period this circle was regarded as an outspokenly liberal club where one could criticize National Socialism. Nearly all the people going there were confirmed opponents of National Socialism; for instance, Dr. Hegemann and Dr. Max Hahn, as well as Major Bloch, an officer of the Canaris department, who was under SS surveillance (compare Gattineau Exh. No. 12). Considering Dr. Gattineau's attitude and his actions, it is not surprising that the Roehm affair alarmed him and that he nearly suffered the fate of a Jung, who wrote the speech which Papen delivered at Marburg. In addition to that we must consider the testimony of the affiant Hans-Heinrich Schulz, the chairman of the German student body before the seizure of power by the National Socialists (Gattineau Exh. No. 34). I quote:

"Those students who supported me were opponents of National Socialism. When, after local elections in the student's association, there was a National Socialist majority, I relinquished my post at the end of the year 1931, and in open opposition to the Nazis ceased to interest myself in activities concerning problems of the student's association. I maintained the

leadership of the group that had supported me, and we formed an organization, the purpose of which was to act as an opposing force to the National Socialist German Student's association ... For the carrying out of these election fights and for means of supporting the organization, money was needed. I therefore contacted Geheimrat Duisberg and Dr. Gattineau and tried to obtain from them the necessary means for our activities. These were given to us willingly. It was clear that it was Dr. Gattineau in particular who tried to be of use in this connection. Through Dr. Gattineau I received all the necessary means until the middle of 1933. Because of the impossibility of continuing our struggle, in 1933 I ceased approaching Dr. Gattineau." End of quotation.

It is surprising that in view of the political attitude of a Bosch, a Duisberg, the Prosecution presumes that Dr. Gattineau, whose attitude toward National Socialism must be described as hostile, arranged for a conference, at which he probably did not say anything at all, to bring about an alliance between Farben and the NSDAP. This presumption surprises every historian, all the more so when one considers the NSDAP Party program with its anti-trust and anti-cartel platform. Not without reason does Hansa Rechenberg state the following in his affidavit (Gattineau Exh. No. 61), I quote:

"Of a so-called 'alliance of Farben with Hitler and with the NSDAP respectively', I heard for the first time through the publication of the Nuernberg Indictment. Every National Socialist, before and after 1933, would have indignantly rejected such an allegation in those days." End of quotation.

On what then, is the fantastic claim of the Prosecution based, which says, I quote:

"Farben reaped tremendous profits and advantages from the alliance which



they concluded with Hitler in 1932 and which could be broken only by force of arms in 1945." End of quotation.

Dr. Gattineau stated in his direct examination, I quote:

"In the fall of 1932, Geheimrat Bosch asked me to come to the Adlon Hotel. He was very much excited about several newspaper attacks by the National Socialist press on German gasoline production. He said something along the lines that one would have to find out whether that was the opinion held by the Party. If one were to explain to them intelligently the economic significance of synthetic gasoline production it should be possible to get them to cease their attacks." End of quotation.

Gattineau was the Farben press chief. He had heard the lectures of Haushofer, who knew Hess. Gattineau contacted Haushofer. This is how the conference was arranged. This is not the only one either, and not limited to the NSADP, as the Prosecution tries to make out. The affidavit by Baacke (Gattineau Exh. No. 185) shows that this visit to Hitler was undertaken in connection with a large campaign for enlightenment. During that same period of time the Leuna plant was inspected by economic experts of various political parties, from those of the left, excluding the Communist Party, to those of the extreme right.

That is the background of a conference where no discussion whatever was held about the gasoline tax grants,

nor any promises made of a financial or any other nature. That no agreements had been intended beforehand may be seen from the fact that Dr. Buctofisch was only a Prokurist with the title of Director, Dr. Gattineau not even a Prokurist.

Now also was the IG to try to stop the irrational attacks in the powerful National Socialist press, attacks which were of considerable severity, as the following quotations show: Article from the "Völkischer Beobachter", dated 10 February 1932, headed, "Doubtful Economic Drive - Interests of the Parties interested in Standard Motor Fuel".

"Generally speaking, we have the strongest objections this motor fuel plan. The elimination of half of the German benzene production would be equivalent to a one-sided preference of the IG at the expense of the benzene-producing industry and of all the consumers. On examining the whole plan one gains the impression that this is not an action taken in the interest of the German political economy, but a profit-seeking plan of an influential group of people anxious to safeguard their own interest."

An article from the "Völkischer Beobachter", dated 28 June 1932, headed, "Foreign Rule over the German Economy and its Dangers".

"The fact that a large proportion of the German economy is under foreign rule constitutes a mortal danger for our nation"... "A state imposing its strong will also in economic policy and asserting it in the service of the people will ensure that the German will rid himself also from foreign rule in the economy!"

Article from the "Völkischer Beobachter" dated 11 March 1932, headed, "IG Farben and Oppau".

"And what about the hydrogenation of coal, developed in Germany under immense sacrifices in money and human lives?

No sooner had the process been developed than the patents could be sold to Standard Oil."

An article from "Der Fuehrer", the Badener paper crusading for National Socialist policy and German culture, of 21 January 1932, under the heading: "Fuel price scandal - Do Government and big capital work hand in hand? Is German motoring to be strangled completely?"

"...while the leading associations are waging an avid fight against the price-boosting policy of the fuel industries associations, government and big capital are uniting for a new and crushing blow against German motoring... The creation of a standard fuel means nothing more in the long run than the introduction of a monopoly in general..."

How fantastic the Prosecution's assertion of a union is, is shown by the fact that none of the representatives of the Reich Ministry of Economics who took part in the petroleum negotiations, or any other officials, were told that there were any promises or guarantees from Hitler or his Party to the IG concerning petrol hydrogenation, and that care should be taken in regard to this fact. The evidence has proved conclusively that petrol negotiations with the Reich Ministry of Economics started at the beginning of 1932 under the Bruening Cabinet and that from 1931 until 1937 no increase in petrol duty took place.

I refer in this connection to Gattineau Exhibits Nos. 50, 51, 52, 53, 56, and 58.

That false conclusions might be produced by a Prosecution that does not start from facts but from a fantastic hypothesis is shown by the following points of the Prosecution, namely, that the economic rise of the IG starting in 1932/33 proved its close relation to the NSDAP.

On the other hand it is a clear fact that the same rise



also occurred in British and American industry. I am convinced that history will subject the findings of the IMT judgment to considerable correction and will place the events of the National Socialist period and those of the Second World War in the right light. In spite of that, I should like, for the purpose of argumentation, to take the IMT judgment as a basis in the question of aggressive warfare or rather of common knowledge.

The text book "Das Urteil von Nuernberg" (The Nuernberg Judgment) published by the Mythenburger Verlagsbuchhandlung in 1946, says on page 141 - I quote:

"The evidence does not show that he participated in any of the conferences at which Hitler outlined his aggressive intentions. Consequently, the Tribunal takes the view that Frick was not a member of the common plan or conspiracy to wage aggressive war as defined in this Judgment." End of quotation. The four conferences were those of 5 May, 1937, 23 May 1939, 22 August 1939 and 23 November 1939.

With reference to Papen, the judgment reads on page 172 of the same book - I quote:

"There is no evidence that he was a party to the plans under which the occupation of Austria was a step in the direction of further aggressive action, or even that he participated in plans to occupy Austria by aggressive war if necessary. But it is not established beyond a reasonable doubt that this was the purpose of his activity, and therefore the Tribunal cannot hold that he was a party to the common plan charged in Count One or participated in the planning of the aggressive wars charged under Count Two."

In giving the reasons for Fritzsche's acquittal it is stated on page 183 of the same volume - I quote:

"Never did he achieve sufficient stature to attend the

planning conferences which led to aggressive war... Nor is there any showing that he was informed of the decisions taken at these conferences. His activities cannot be said to be those which fall within the definition of the common plan to wage aggressive war." End of quotation.

From the reasons given in the case of Schacht, I quote from page 150/51 of the same volume:

"It is clear that Schacht was a central figure in Germany's rearmament program, and the steps which he took, particularly in the early days of the Nazi regime, were responsible for Nazi Germany's rapid rise as a military power. But rearmament of itself is not criminal under the Charter. To be a Crime against Peace under Article 6 of the Charter, it must be shown that Schacht carried out this rearmament as part of the Nazi plans to wage aggressive wars..."

"The Tribunal has considered the whole of this evidence with great care, and comes to the conclusion that this necessary inference has not been established beyond a reasonable doubt." End of quotation.

The Prosecution witness Paul Schmidt had to admit, that it is unlikely for one of the defendants to have known more about Hitler's intention to wage aggressive war than Schacht and Doenitz. Does the Prosecution believe that Dr. Gattineau knew more than these persons, who were members of the political leadership of the Third Reich?

Let us moreover consider the propaganda of the Third Reich, the so-called peace talks, as well as the declaration signed by Hitler and Chamberlain in Munich in 1938; then it will become clear that Dr. Gattineau was taken unawares by the foreign political events which led to war. Else he would not have gone to Borkum in August 1939 to spend his vacation there.

Regarding the question of the Protectorate, the defendant

Dr. Gattineau testified in the witness-stand and I quote:

"The theory was represented at the time that Czechoslovakia, in view of its friendly policy toward Russia, could become an aircraft carrier for Russian to enter the heart of Europe. When the agreements with Hacha were published, I considered them a protective measure against the East." End of quotation.

How well-founded Dr. Gattineau's opinion was can be seen from Exhibit No. 146, submitted by me, regarding the Bolshevization of Czechoslovakia in connection with the events of 1948. He could not have known the manner and method, the "how" and Hitler's aims. My client's surprise when hostilities against the Soviet-Union began is shown in Gattineau Exhibit No. 191. It becomes quite clear that the individual who was not a member of the closer circle of the political leaders of the Third Reich could not have been informed about domestic and foreign policy measures, due to the secrecy regulations.

The Prosecution intended to prove participation in aggressive warfare, for instance through contributions sent to the Party and its branches, as well as through activity in the Advertising Council, in the circle of experts of the Propaganda Ministry, in the Wipo, as well as in Austria or South-East Europe. There are three main points with which the Prosecution charges the defendant with reference to the SA-complex after 1933:

negotiating the purchase of a house under the Brown House scheme, his position as economic advisor to Roehm, procuring donations for the SA. However, I do not understand what the Prosecution wishes to prove by this, as the SA was acquitted by the International Military Tribunal. Nevertheless I should like to make the following remark: Before the National Socialists rose to power, the IG tried to support the groups which were against the National Socialists. It was a measure of



self-defense, after the National Socialist revolution, not to exclude oneself from the collections of the NSDAP, which were made under the cloak of social welfare. The wild collection activity of the various organizations could be halted only by the payment of a fixed sum to the head offices of the organizations.

The so-called house purchase within the Brown House scheme turns out to a completely harmless affair. The evidence has shown the following: Roehm had a private apartment in Munich in the Prinzregentenstrasse. The house next to it was to be sold. For reasons of security, Roehm considered it important to rent this house. SA-Gruppenfuhrer Schreyer, Roehm's expert in questions of administration and finance, therefore suggested that the IG should buy the house and should put it at the disposal of the main SA-Administration on lease. This was done through the Bugger-AG., which took over the house again after 30 June 1934. This affair had nothing to do with the Brown House. It had been proved by Gattineau Exhibit No. 41, that my client never held the office of an economic advisor to Roehm and was never considered such by any Department.

Through the submission of the documents Gattineau Exhibits 42 and 43 it becomes evident, that the SA did not follow the policy which led to the war and that the supreme SA leadership headed by Roehm was in opposition to the policy of Hitler and the Party.

Gattineau - Exhibit No. 42 reads -- I quote:

"Roehm followed a policy of conciliation with the Western Powers. The establishment of a militia, which he envisaged, was to be carried out after a prior agreement with the Western Powers. Parallel to the 100,000 man Army, this militia was to be created on the Swiss pattern in order to strengthen the defensive force of the Reich against the danger which threatened from the East. In contrast to other agencies of the Party, Roehm advocated the cooperation of the trade unions in the economic and social-political life of Germany. He adopted a liberal attitude in the church question. In consequence of this attitude of Roehm's, a pronounced estrangement took place him and Hitler and influential Party agencies.."  
End of quotation.

Gattineau Exhibit No. 43 reads and I quote:

"After 30 January 1933 tension developed in the relations between Goering and Roehm. I learned about this in an SA Leader meeting at Koenigstein ... Roehm, among other things, said the following: He would bring his influence to bear in favor of an understanding with all neighboring states. The SA was not in the first place to be regarded as an instrument of power, its task was rather to justify the confidence it had gained in the internal political struggle. It would betray a weakness, after having obtained power in the state, to believe that Germans could be governed by rubber truncheons .... He (Roehm) would never lend his hand to support the hunger for power of certain individuals. Thereby one would imperil the peace of Europe; the new state could not afford to indulge in experiments which would conjure up a new war ... Roehm openly opposed the alliance with Italian fascism and said: 'For Germany the only thing is the orientation towards the West. He stated that, unfortunately, Goebbels, too, had gone over to the other side....' End of quotation.

Thus it is established that financial support, seen objectively, could not have served the purpose assumed by the Prosecution. These divergencies

which developed within the NSDAP in the course of time explain why, as can be seen from Gattineau Exhibit No. 40, Dr. Gattineau was reproached after 30 June 1934 with having financed the revolt against Hitler with IG funds. It is amusing that the prosecution should interpret this as lending financial aid to Hitler. Incidentally I should just like to point out that prior to 30 June 1934 the Party had tried several times to attack Dr. Gattineau for political reasons. Gattineau Exhibit No. 40 shows that the SS Leader and Referent in the Propaganda Ministry, Bogs, accused Dr. Gattineau of having, among other things, used his position in the IG in order to sabotage Goering's attempts to collect funds in Sweden for the NSDAP.

30 June 1934 represents an important date in the life of the defendant Dr. Gattineau. It was only by chance that he escaped from death. In these circumstances he ruthlessly drew the consequences and refrained from taking part in any political affairs. He resigned from the SA. He tried to shield himself from the NSDAP by becoming a Party member in 1935 and endeavored to get abroad, where he thought he would be safe.

In their effort to substantiate artificially the assertion that the defendant supported Hitler, although aware of his aggressive intentions, the prosecution has produced all sorts of evidence. That is the reason why membership in the circle of experts and the Advertising Council was listed as incriminating evidence. It always happens that if one searches for reasons, one often arrives at faulty conclusions. This happened to the Prosecution regarding the Advertising Council and the circle of experts.

The documents Gattineau Exhibits No. 16 and 19 prove the contrary of the Prosecution's assertion and show that neither of the two institutions was a propaganda organization of the Third Reich. Persons of international repute, such as Generaldirektor Diehn, Otto Christian Fischer, etc., belonged to the council of experts of the Propaganda Ministry. It was proved that there was no actual assignment of tasks or confidential collaboration with the Propaganda Ministry. Dr. Goebbels soon had enough



of the attempts of these gentlemen to find out the effects abroad of the measures taken by the Third Reich and to point out the negative effects of the radical measures of the National Socialist Government. In 1934 the activity of this circle was stopped. Erwin Finkenzeller, the manager of the Advertising Council, writes in the "Voelkischer Beobachter" on 8 November 1933 with regard to the Advertising Council — I quote:

"The main task of the Advertising Council is to further advertising in any conceivable manner and to point out to the German people as a whole the value and necessity of economic propaganda... No new announcement of the Advertising Council will ever prevent advertising but always promote it. Every new announcement of the Advertising Council will hurt only those who believe that they may operate within this important economic branch with unfair methods or any methods detrimental in economic respect." End of quotation.

These excerpts may suffice to show the significance of the Advertising Council.

The Defense submitted the minutes of the session of the working committee held on 7 September 1932, which read — I quote:

"The Central Committee furthermore decided upon the formation of an Economic Policy Department, under the management of Dr. Gattineau, which comprises the Press Agency, the Economic Policy Bureau, and the Trade Policy Bureau." End of quotation.

In order to be able to state its case, the Prosecution submits that the founding of the Wipo was connected with the National Socialist seizure of power. This has been contradicted by the submission of the quoted extract from the proceedings. Thus there can be no doubt that Gattineau's statement is correct, when he says in his examination — I quote:

".... so many Farben people from various Farben offices running around in Berlin to settle some matter with the various government authorities. Besch learned that it often happened that two or more departments

took up different attitudes in the same matter to the Berlin authorities."  
End of quotation.

Thus it was the purpose of the Wipo, as shown by the Prosecution-  
Exhibit 891, Book 48, English page 79a - I quote:

".... to keep up the increasingly important contact with official  
and semi-official offices and to keep in contact with the authorities  
and prepare the way for Farben's wishes so that they can be submitted  
to the authorities for decision." End of quotation.

It is, however, a wrong assumption, as shown by the statement of the  
Prosecution witness Dr. Krueger, to infer from the above that the  
Wipo was competent for all contact with the authorities. Technical  
matters remained in the hands of the Vermittlungsstelle W, which was  
also competent for contact with the authorities of the Four-Year Plan  
and the military authorities. There was no cooperation between this  
office and the Wipo. The central Finance Department was in contact with  
the Reichsbank, the Reich Ministry of Finance, the Foreign Currency  
Offices, and the Banking Department of the Reich Ministry of Economics.  
The Legal Department had to deal with the Patent Office, the Social De-  
partment with the Ministry of Labor and the Labor Offices.

It is also wrong to assume that the Wipo was the Liaison Office for  
the Party organizations. It was altogether impossible to centralize  
the contact with Party Offices, since the Party organization was estab-  
lished on regional lines. The factories and plant communities were,  
therefore, forced to settle their affairs with the Party offices locally.  
Kommarsienrat Laibel was competent for contact with the Auslands organi-  
zation, as is expressly shown by the resolution of the Commercial Com-  
mittee dated 20 January 1938. Thus the sphere of activity of the Wipo,  
as can be seen from the most varied statements by witnesses, remained  
the contact with the Ministry of Economics. Recently, the Prosecution  
tried to over-emphasize the importance of the Wipo in order to hide the  
fact that in reality the Wipo was one of the smallest departments of NW 7.

In 1932 it had eight qualified officials, in 1938 there were twelve. Furthermore, in 1935 the Press Department was separated from the Wipo.

How little the National Socialist seizure of power had to do with the Wipo can be seen from the fact that in 1933 expenditures for this department decreased, while later, in consequence of the increase in the number of government officials, it rose slowly. Nor does the importance of the Economic Policy Department increase if the Prosecution submits that Gattineau participated for some time in the meetings of the working Committee. For it is a fact that he was present at these meetings as a guest, not as director of the Wipo, but in his capacity as director of the Press Department until 25 April 1935, whereas he was director of the Wipo until the end of 1938. See Cp. Gattineau - Exhibit 74.

Propaganda, espionage, and cooperation in mobilization are points which the Prosecution links up with the Wipo.

One fact above all seems to be important to the Prosecution. The Brazilian Broadcasting Corporation asked for material against the Communist International. The request was forwarded to the Wipo for submission to the competent authorities, a request by an official Brazilian authority. I do not understand why it should be punishable.

Therefore, especially in view of the knowledge based on present events and in view of the fact that political circles within the United States are now contemplating the formation of an anti-communist ministry, Dr. Gattineau's ironical answer to Mr. Sprecher becomes clear - I quote:

"Ah, you are referring to the alleged war crime of anti-Communist propaganda." End of quotation. It is a fact, however, that the IG did not make any propaganda; it only forwarded a request which it had received. Nor does any other document submitted by the Prosecution show that any propaganda was made in behalf of the NSDAP. All Prosecution documents have, by the way, been discussed in direct cross-examination in such detail that I can spare myself the trouble of going through them once more. Dr. Felix Ehrmann, in his affidavit is therefore right in saying



I quote: "I have no reason to believe that the Wipo was engaged in espionage and political propaganda." End of quotation.

Nor was there anything left of the accusation of espionage. Herr Bloch, who has been quoted by the prosecution, was well-acquainted with Herr Gattineau, and was an enemy of National Socialism from the Canaris-group. Together with my client he frequented the liberal Hegemann circle. What he received were interesting newspaper articles now and then, but no espionage material. The witness Raporti, who was a captain in counter-intelligence, states with reference to the whole problem: -

I quote: "None of the gentlemen succeeded in inducing the IG to cooperate in the economic intelligence service, as it was generally the understandable tendency of the big concerns working abroad to avoid any connection with the intelligence service on account of its compromising character."

End of quotation.

This is also confirmed by Gattineau Exhibit No. 76, where it says - I quote: "No activity on behalf of counter-intelligence for export reasons". End of quotation.

The next point in dispute is the M-Question. The Prosecution regards this as measures for mobilization. Even witnesses for the Prosecution state that the purpose was deferments. I refer to Dr. Krueger, Frank-Fahle and Gustav Kuepfer. The latter states - I quote:

"At all these meetings when the "M" questions was discussed it was always the aim that as much personnel as possible was to be retained for Farben and was to be kept out of the Wehrmacht. That applied particularly to dyestuffs and the sale of dyestuffs, because, in itself, this was not war-essential and was therefore particularly endangered by recruitment for the Armed Forces." End of quotation.

Thus there can be no doubt that the M-question is the last consequence of the introduction of universal conscription, in order to keep up the commercial institutions in spite of the calling up for maneuvers and also in case of mobilization, and not a code name for mobilization plans. It is equally impossible to establish a connection between export promotion and the NS policy of force. Export promotion was necessary for general economic reasons. As a result of the same situation in raw materials and food, leading American and German authorities are today faced with the same problem. In order to clarify this point, I may mention that export promotion was in the hands of the Export Promotion Department.

Regarding the Austrian questions the Court has already ruled a precedent. The count of "plunder and spoliation" has been cancelled. Enough evidence has been submitted to show that the business transactions were proper. The whole question must therefore be regarded only from the point of view of deliberate assistance in an aggressive war. The purpose of I.G.'s dealing with Skoda-Wetzler and the Karbidwerk Deutsch-Matrei has already been discussed, so that I need not repeat it. It has become sufficiently clear that the Karbidwerk Deutsch-Matrei was in close connection with the I.G. for 15 years and that years before the Anschluss (union of Austria with Germany) there had been negotiations concerning Skoda-Wetzler, as early as 1936 the Kreditanstalt was prepared to sell to the I.G. their entire holdings of Skoda-Wetzler shares.

In order to avoid misunderstandings, I must mention that the full name of the Skoda-Wetzler firm is "Pulverfabrik Skodawerke Wetzler A.G." as the firm produced powder during the First World War. After the First World War the installations were destroyed and during the time in question no more powder was produced. Only the title remained.

Before the Anschluss, during the Anschluss, and for weeks after the Anschluss, Dr. Gattineau was travelling in Africa, so that he could not have been present at the negotiations for the sale of Skoda-Wetzler at that time. In May 1938, i.e. 2 months after the Anschluss, he was sent to Austria to assist Dr. Ilgner. It was Ilgner's task to arrange for those commissioners to be recalled who had been installed by the new Government for controlling the I.G. plants. Dr. Gattineau was to assist him because he knew Dr. Bilgeri, Stabsleiter for the competent national commissioner for private enterprises, from his student days. Stabsleiter in this connection means the leader of the office staff. The result was that the



commissioners were recalled.

In the following period, Dr. Gattineau was ordered to assist Dr. Fischer, commissioner of the I.G. for Austria, in his negotiations and his measures for the organization of Donauchemie. However, until 1941 Dr. Gattineau did not belong to any subsidiary of the IG in Austria. From 1 January 1939 onwards, he was acting director of the AG Dynamit Nobel Pressburg and had his office in Pressburg (Bratislava). It is, therefore, obvious that at that time he could no longer deal with Austrian questions, as he was fully occupied with the organization of the Pressburg plants. It was only in 1941 that he became involved in them again, when he was appointed a member of the Vorstand of Donauchemie.

It is therefore, understandable that Dr. Gattineau, when being cross-examined, could not remember the Dr. Bilgeri affair, Documents No. NI-14504, Exhibit No. 2137, and NI-14505, Exhibit No. 2138, which occurred in March 1939. If Dr. Buhl did not make a mistake in the name - for Buhl wrote Kuehne about things of which he obviously knew only by hearsay - then this correspondence proves the contrary of the Prosecution's assumption. The IG had so few obligations towards Dr. Bilgeri that they could reject his request for inclusion in the Vorstand of Donauchemie.

In his capacity as a member of the Vorstand, Dr. Gattineau had to take care of the commercial and financial affairs of Donauchemie from 1941 onwards and besides his activity in Pressburg, was director of the administration in Vienna. Dr. Henning was manager of the plant Moosbierbaum, Dr. Hackhoffer manager of the smaller plants of Donauchemie. The chairman of the Vorstand was Dr. Kuehne.

From 1939 onwards the industrial interests of the IG in Austria were concentrated into Donauchemie. Production served

the needs of the Austrian economy and had nothing to do with either armament production or the Four-Year-Plan, as stated by the witnesses Engineer Platzer, a former director of the Karbidwerk Deutsch-Matrei and Dr. Hackhofer, a former member of the Vorstand of Donauchemie, both gentlemen being Austrians. Platzer said - I quote:

"I know nothing about the manufacture of armaments products in any of the Donauchemie plants." End of quotation.

Dr. Hackhofer said - I quote:

"The Vorstand of the Donauchemie, of which I was a member since the formation of the company in 1939, undertook the development of the plants with the aid of the IG, with the aim of increasing the yield of the plants by expanding them, above all of meeting the increased Austrian civilian requirements." End of quotation.

"And at another point- I quote: "Thus it cannot be said that the Donauchemie was harnessed to the war machine of the Reich. "End of quotation. With regard to the question of Donauchemie and the Four-Year Plan, the witness stated - I quote: "The plans for development were drawn up completely independently of the Four-Year Plan, the achievement of which was not taken into consideration either in founding of in planning the expansion of Donauchemie." End of quotation.

Neither my client nor the Donauchemie had anything to do with the IG factories established in Austria for the dehydration of petroleum and for the production of magnesium. The factories belonged to the IG and were managed by the competent Technical Offices. As Dr. Buetefisch and Dr. Buergel have unanimously testified, there were no plans for these factories in 1938/39 when Donauchemie was founded. They were erected by governmental order only 2 years after the outbreak of war.

To the of Vienna, hardly an hour's distance by car, lies an old town - Bratislava (Pressburg.) Bratislava, so far as the Prosecution is concerned, signifies AG Dynamite Nobel, allegedly one of IG's most important factories for explosives in the occupied territory. The indictment claims that Dr. Gattineau there shared in the procurement and ill-usage of foreign workers and in spoliation. So ara as the Prosecution is concerned, Bratislava forms the central point of the plans for the inclusion of the South-East in the German armament machine.

For noe of their accusations has the Prosecution been able to produce evidence. In spite of this, the Defense has proved:

- a) that no spoliation took place in Bratislava
- b) that no armament production was carried out,
- c) that the opening-up of the South-East was not directed by the aim for war productions...
- d) that no compulsory workers were employed in Bratislava.

The very basis of the Indictment is incorrect. Slovakia was not occupied territory but a sovereign state acknowledged by the Vatican, by neutral States, and in part also by former allies. Gattineau took over a neglected plant there. He handed back to the now Czech-Slovakian state a model factory. In Bratislava, during Dr. Gattineau's period of activity, a comprehensive reorganization of the entire works was undertaken. New factories were built, road and traffic conditions were modernized and other important investments were made. The Defense has submitted Gattineau Exhibits No. 113, 114 and 116, from which the story of Ag Dynamit Nobel/Pressburg may be seen. It is obvious that, far from spoliation, important investments were made in connection with the works. In reviewing this defense material, which was accepted by the Prosecution without objection, one cannot help being surprised at the nerve of the Prosecution in makin



such statements.

What happened in Bratislava? A factory for mining explosives was built there, because the Slovaks themselves had need of mining explosives in their pits and for road construction. There was, in addition, a possibility of exporting mining explosives to the South-East above all to Yugoslavia and Greece. Furthermore, a factory for staple fiber with an annual output of 7 to 8 million kg was built. The Slovaks had all the raw materials in their own country. The Prager Verein produced caustic soda and cellulose and mined coal at Handlowa in Slovakia. Sulphuric acid and carbon disulphide came from the Dynamit Nobel at Bratislava.

The factory which was erected was among the most modern of its kind in Europe and in a position to supply the entire Slovakian requirements. On this account the Slovakian textile industry could work 100% until 1945 - i.e., as long as the Vistra factory continued to produce. There was even a surplus production, which was sent to Switzerland and Hungary. The Slovakian economy thereby obtained foreign currency.

Furthermore, a sulphuric acid plant was built, the greater part of the sulphuric acid being sold in the country itself and excess production being exported. The carbon disulphide factory was enlarged. Carbon disulphide was needed for the manufacture of artificial fiber. I need not allude to smaller projects which arose, for it must be obvious that Bratislava was no armament plant. AG Dynamit Nobel Pressburg owned a number of various affiliated companies in the South-East. These participating firms produced entirely for their own home industry, nothing for the Axis. And the new projects in the South-East were purely peace-time production. I will quote three: one project is the construction of a fertilizer nitrogen factory for lime ammonium nitrate in Rumania within the scope of a company AZOT with Rumanian majority holdings.

This factory was to supply nitrogen to Rumanian agriculture. For Hungary a Marsolat factory was planned to supply raw materials, to the Hungarian scrap industry. In Yougoslavia a rayon factory was projected on the basis of Yugoslav cellulose and caustic soda.

The industrialization of the South-East was carried out from Bratislava with a view not only to "do ut des", but even more from the angle of "do ut vivas".

The Prosecution has submitted one single document proving that foreign compulsory workers or P.O.W.'s were employed at Bratislava. Defense affidavits demonstrate the defendant Dr. Gattineau's exemplary, public-spirited activity. A number of declarations on oath also confirm this. I may mention Gattineau Exhibit No. 116. In this declaration Dr. Eugen Fischer states the following on oath — I quote:

"In every kind of position we employed primarily indigenous personnel of German, Slovakian, and Hungarian nationality. The factory workers were exclusively indigenous labor. We never employed foreign workers or prisoners of war." End of quotation. Working agreements in Bratislava were concluded on a voluntary basis. It is natural that in view of the existing social program and the plant's wage policy, applications by workers were in excess of the plant's requirements. The witness quoted above continues in his affidavit — I quote:

"Jointly with Dynamit Nobel we carried out a comprehensive social program in Pressburg, consisting of the erection of new homes, recreation grounds, sports grounds, welfare office, central messing facilities, and supplementary food issues, as well as medical care through a special infirmary. As regards wage policy, we afforded our employees additional income in the form of efficiency and long service bonuses over and beyond the provisions of bare wage regulations.

All social institutions could be used by every employee, irrespective of nationality." End of quotation.

The affiants Dr. Moyer, Dr. Rudolf Schmidt, and Koepke also confirm in their affidavits that neither P.O.W.'s, nor foreign workers nor detainees were employed at the Fressburg plant.

Robert Seydl, in Gattineau Exhibit No. 122, gives a complete character sketch and an account of Dr. Gattineau's attitude. I may therefore quote from this affidavit —

"Dr. Gattineau was esteemed and — if I may use the expression — worshipped by all the personnel, irrespective of nationality and religion. There were sufficient reasons for it..... As former Chief of Personnel I do not remember a single case when Dr. Gattineau did not help..... Towards Jews, Dr. Gattineau behaved more than correctly." End of quotation.

The affiant gives a number of examples to show how concerned Dr. Gattineau was for the living conditions.

This alone must serve as an explanation of why Dr. Gattineau's subordinates have come to his assistance in this trial by giving a number of joint declarations on behalf of their former chief.

David J. Dallin and Boris I. Nicolaevsky, whose work on the system of labor camps in Soviet Russia was published by the publishing firm of the "Neue Zeitung", that is to say, encouraged by the official organ of the American Army in Bavaria, write in their foreword on page 3 — I quote:

"The average citizen in Russia knows little enough of those labor camps. He knows minor facts only concerning his own life — poor trifles which never admit of conclusions as to the whole and much less a competent judgment. And how could he..... Newspaper and radio produce masterpieces of 'camouflage'." End of the quotation.



This applies to present-day knowledge in Soviet Russia. That the German people were kept in ignorance of conditions in the concentration camps and labor camps is even today refuted in some quarters, and above all by the Prosecution in the I. G. Farben Trial.

The present Suffragan Bishop of Munich, surely a reliable witness, writes in his work "Kreuz und Hakenkreuz" (Cross and Swastika) — I quote:

"Did a large fraction reach the public of the ghastly horrors in concentration camps, of the misery of deported compulsory workers? In the following chapters we shall see how courageously and resolutely popes, bishops and priests protested against each wrong of which they learned..... That suggests, from the beginning, that if they did not protest against the horrors mentioned above it was merely because they were ignorant of them. And just as great or even more so was the ignorance of other people with regard to these misdeeds. This can be reasoned and proved in greater detail:

"For eight years I have collected all that could be gathered on National Socialist laws.....news on acts of injustice, atrocities... ..and so on. Hundreds of pages of the book mentioned above, published in 1940, 'The Prosecution of the Catholic Church' originate from my collection. This may prove my confirmation all the more conclusively: Next to nothing could I learn and pass on regarding concentration camp atrocities.....

"Little enough was made public even by the so-called labor kommandos which, during the last years, were assigned to armament works in increasing numbers and frequently came in contact with civilians; the detainees knew they had to be very careful on account of 'spies' in every plant....." End of quotation.

Does the Prosecution believe that Dr. Gattineau was in a

position to learn more of this subject than the average German? The negligible extent of his knowledge in connection with the manner of allocating foreign labor is proved by the fact that after his flight from Bratislava he and his family lived in the so-called Steinlager (Stone Camp) at Schav, where, so he learned subsequently, compulsory workers had also been quartered.

Dr. Gattineau did not belong to the Vorstand of I.G. nor to the Unternehmensbeirat. It must be added that from the beginning of 1939 he no longer held any direct function in I. G. Farben. He was not present at any conference of works chiefs. Records of the Commercial Committee prove that from 1937 to 1945 he was present only eight times as a guest during the whole or part of a meeting when matters of his sphere of work were under discussion. At no meeting which he attended were political questions discussed which might have given enlightenment as to political aims.

In final conclusion of the evidence in the Gattineau case, it has been shown clearly that the accusations by the Prosecution are unfounded. The trial has demonstrated that, beyond any doubt, the defendant Dr. Gattineau is not guilty. In these circumstances there is only one thing left for me to do at the conclusion of this trial, and that is to move to acquit the defendant Dr. Gattineau.

THE PRESIDENT: It is ten minutes before time for the noon recess, and we shall leave it to you, Dr. Hoffmann, as to whether you wish to go forward now or wait until after lunch. If you do conclude to wait until after lunch, the Tribunal is disposed to run as long as necessary beyond our usual time of adjournment this evening in order to afford you gentlemen an opportunity to close your case. Now, you may use your own judgment as to what you prefer to do: Use this time or put it at the end of the session this afternoon, if necessary, to conclude the presentation on behalf of all of counsel for the Defense.

9 June 48-M-DC-13-5-Primeau (Garand)  
Court 6, Case 6

DR. HOFFMANN: May it please your Honors, I will need only one hour for my final plea, and therefore I move to recess now.

(The Tribunal adjourned until 1330 hours, 9 June 1948.)



AFTERNOON SESSION

(The hearing reconvened at 1330 hours.)

THE MARSHAL: The Tribunal is again in session.

DR. HOFFMANN, (Counsel for the defendant von der Heyde.)

Your Honors,

The Prosecution has brought my client Erich von der Heyde to trial before this High Tribunal and claims that he is guilty under Article II of Control Council Law No. 10.

The crimes listed in Article II, Paragraph 1, are classified as crimes against peace, war crimes, and crimes against humanity, as well as membership in an organization which was declared criminal by the International Military Tribunal.

Paragraph 2 of Article II establishes the persons who may be classified as having perpetrated such acts, and Paragraph (2) f contains some directives according to which a perpetrator might be a person who held a higher political government, or military rank (including a position on the general staff) or one who held an important position in the financial, industrial, or economic sphere in Germany.

While the first part of these directives points to the leaders of the Party, the authorities, and the army, the second part includes the entire economy of Germany and places persons and organizations having no connection with the affairs of state either as politicians, functionaries, or military men, on an equal level with the main active functionaries of the state.

The Prosecution is conducting this trial as an economic trial. It must therefore be assumed that it refers to the latter part of these directives. But even if, in addition, it also applied to the first part of the directives, this would be irrelevant so far as the following statements are concerned, to begin with, the only matter to be discussed is the question of how the expression "a higher" position (gehobene Stellung),

as used in Paragraph 2 ff, Article II of Control Council Law No. 10, may be reasonably interpreted. The expression "a higher position", viewed disconnectedly, admits of many interpretations.

A police Inspector is already considered as holding a "higher" position in his district, and the same applies to the position of a lieutenant in his company.

This would establish millions of "higher positions". It cannot be assumed that Control Council Law No. 10, aims at all these "higher positions". It undoubtedly refers only to a certain number of them.

These can be defined according to the following points of view: In contemplating the sociological structure of the state one realizes that the latter is partitioned into many levels. These levels lie one above the other. On each level there are many individuals; some of them on an equal level with others have a "higher position."

Just as safely it may be assumed that Article II, Paragraph 2 ff, does not aim at the holders of all "higher positions", as firmly established appears to me to be the fact that in adhering to the example of the levels, only the highest of these can be taken into account under the directives according to Paragraph 2 ff.

This view is also supported by Article II, Paragraph 2 ff.

In Article II, Paragraph 2ff, the enumeration of higher positions is supplemented in brackets: Including of a position on the General Staff.

This signifies that, according to Control Council Law No. 10, higher military positions should, as lowest grade, include the General Staff.

Since this could not be assumed as a matter of course, it had to be specifically stated. It further signifies that the level applied to politicians, state functionaries, and economists must be the highest applicable in each category, for there is no mention of the second highest level being included, as in the case of the military.

Actually Control Council Law No. 10, under Article II, Paragraph 2ff therefore aims only at the highest peak positions. It does not apply to people occupying higher positions on lower levels.

In the same way as a book keeper is not included in this group of perpetrators, because his higher position in the plant is on a level which is not under discussion here, so the position of my client Erich von der Heyde must to begin with have been a higher one and, secondly, on a level comprehended by Control Council Law No. 10, Article II, Paragraph 2 ff.

The Prosecution has confirmed the accuracy of these suppositions by referring to the defendants as the "23 leading directors of Farben."

It is not my intention to examine here whether this is justified in general, but shall limit myself to an examination of it with regard to my client Erich von der Heyde.

As to my client Erich von der Heyde, the Prosecution is wrong in applying words such as "leading" and "Director" to him. I have pointed out and proved more than once that my client was neither a Director nor a Prokurist but an employee, the same as ten thousand other employees of Farben.

Not until the spring of 1939 did he receive a minor recognition of his more than 13 years' activity with Farben when, at the age of 29, he was appointed "head clerk" (in German "Handlungsbevollmächtigter").

This appointment as "head clerk" was, however, devoid of any legal or economic importance.

It had no legal importance, because no entry made in the trade register, and, consequently, von der Heyde was not authorized to represent the firm in relation to others; It was of no economic importance because Erich von der Heyde's sphere of activity was without any influence upon Farben's over-all economy.

In the German economic hierarchy, the ladder starts with the Prokurist. This in any case applies in every respect to a Konzern like Farben. It is only after the Prokurist that the rank of Director follows.

The indictment is therefore factually and legally wrong in describing my client Erich von der Heyde as "director".

This he never was.



Neither did he hold any higher position.

For the time being I do not intend to talk about the general level of his position.

For the time being I will only describe his work, in order to prove that he did not even hold a "higher position" ("Gehobene Stellung").

According to his professional training my client worked as a Doctor of Agriculture Science in the Farben Department for Agriculture both in Ludwigshafen and in Berlin.

In Berlin his technical field at the outbreak of the war was "nitrogen and Agriculture".

In addition Erich von der Heyde's field, as from 1 January 1939 onwards included military economy.

This was the name of sub-department constituted on 1 January 1939, including affairs concerning indispensable persons as well as the Sub-Department of the Security Officer (Abwehrbeauftragter.)

In all these fields my client worked exclusively as a specialist (Sachbearbeiter).

Only as Security Office had Erich von der Heyde a position which was different from his other activities.

While in all other fields he received instructions only from his Farben superiors, in his capacity as Security a counter-intelligence officer he also received instructions from government departments.

It is, I think, not worthwhile going into details concerning his simple activities in the special field of nitrogen and gasoline, and questions concerning indispensable persons. I think that this is generally known.

However, I wish to talk about his activity as counter intelligence Officer.

Erich von der Heyde has himself given a description of his activity as counter intelligence officer in the Farben Department Bf 7 (IG Farben Berlin Office.)

He has stated that the Security Officer had to see to it that the

members of his Department were instructed about the necessity for secrecy and about the correct handling of secret documents.

To sum up: the purpose of his activity was to see that instructions about secrecy and the correct handling of secret documents were given to the staff of the concern for which he was working.

In Department NW 7, this involved a few hundred persons. The State decided what enterprise was pronounced an Abwehrbetrieb (Security enterprise). Only after an enterprise had been pronounced an Abwehrbetrieb (security enterprise), was the security officer appointed.

Not the Security Officer but the government departments made decisions in cases of violation of security measures. His activity at that time in reality was only that of a intermediary and instructor.

There were thousands of such officers in Germany.

They represent a measure which may be introduced by any state and probably was adopted by many states.

T The counter intelligence Office does not hold a "higher position".

In the spring of 1940, however, my client Erich von der Heyde was appointed one of the deputies of the Farben Main Security Officer.

This came about as follows:

After the outbreak of the war the OKW Department ABWEHR (Security) instructed all large enterprises in Germany with several plants spread all over the territory of the Reich to establish a central agency in the person of a Main Security Officer to be responsible for uniformity of all security measures in these plants.

This was a war measure and had to be carried out as an order of the government.

Farben established Agency A for this purpose. Dr. SCHNEIDER A became its Chief as Main Counter Intelligence Officer. My client Erich von der HYDE was appointed his deputy in the commercial sector.

His appointment came about because Agency A was for practical reasons to be stationed in Berlin. Dr. SCHNEIDER, who was in Leuna (Central Germany), thought it would be practical - as the agency was stationed in Berlin NW-7 - for the small amount of work to be carried out by the local counter Intelligence Officers, who were residing there already. The activity of Agency A was in any case limited to passing on, either verbally or in writing, the instructions and orders issued by the OKW Security Agency.

This in any case applied to the commercial sector, the only one in Office A in which my client worked as Dr. SCHNEIDER's deputy.

In view of these circumstances, which I have discussed in detail in my trial brief, I have come to the conclusion that my client, even as the Deputy of the Main Security Officer in the commercial sector, held no "higher position".

It must not be forgotten that here, too, a certain relativity of all things must be taken into account.

Naturally, a Security Officer in the commercial sector of Agency A or in an enterprise such as Berlin NW 7 of Farben, had to possess a certain intellectual versatility and a gift for writing and expressing himself.



This will distinguish such a man as compared with those not needing these qualities for their work.

But my client, Erich von der HEYDE, a Doctor of Agricultural Science, possessed this versatility owing to his education; and the intellectual versatility needed for his work as Counter Intelligence Officer, was not more considerable than that required for his other work.

In summing up I must therefore state that the actual sphere of work of my client Erich von der Heyde, i.e., "Nitrogen and Agriculture", as well as his Referat for military economy, which dealt with questions of indispensable personnel, his position as security officer (Abwehrbeauftragter) of Berlin 7 and as Dr. SCHNEIDERS deputy in the commercial sector of security (Abwehr) always showed him as an official-in-charge but never as an independent person in any higher position.

The fact must not be ignored that my client Erich von der HEYDE started his activity at Office A during the war, in the spring of 1940, and left it more or less in September 1940, when he was inducted.

The occasional assistance which he rendered in this field even after he was inducted stopped altogether around 1941. In any case it was restricted to questions of a general character.

The activity of my client as a Counter Intelligence officer (Abwehrbeauftragter) comprised only the forwarding of orders and regulations prescribed by the state in the interests of secrecy, which cannot be described as disreputable or as an offense against morals.

Even such letters as Document NI 7626/ Exh. 927. Doc. Book 49 and NI 1147/ Exhibit 930 / Doc. Book 49, addressed to von SCHNITZLER, were not written on his own initiative. They are the result of directives given by government offices and were written by my client, Erich von der HEYDE, to Herr von SCHNITZLER with the concurrence of Dr. KRUGER, the deputy director of Berlin III 7.

As Counter Intelligence officer (Abwehrbeauftragter) in a commercial enterprise and for some time deputy of the Main Security Officer (Hauptabwehrbeauftragter) in the commercial sector, my client had nothing to do with foreign workers, concentration-camp inmates, or prisoners of war.

Such tasks - if they were to be dealt with at all - could only have occurred when my client had been in the armed forces for a long time and had nothing more to do with these matters.

After having dealt with the "high position" of my client, I shall now examine the general scope of his activity within NW 7.

First of all it must be stated that NW 7 as such comprised mainly the Central Finance Department, but the Political Economy Department, and the Economic Policy Department, but could not be described as, say, the head of Farben. NW 7 in Berlin was a link in the structure of Farben in the same way as every works. Furthermore my client was only a referent in the Economic Policy Department of NW 7.

It is therefore obvious that under these circumstances his influence on the general administration of Farben was still less, for my client was neither a member of the Central Committee, nor of the Vorstand, nor of the Aufsichtsrat, nor of the Technical and Commercial Committees, nor at any time member of any Commission.

In view of the above I am therefore fully justified in saying that my client worked on a plane which has never been considered by Control Council Law No. 10 as coming within Article II Paragraph 2 ff.

When I examined Erich von der Heyde as a witness in his own case to make all these statements which are not contested by the Prosecution, I was of the opinion that in the face of this the indictment could no longer be maintained in a factual sense.

I am also fully convinced from the legal aspect that in view

of these statements there is no possibility of establishing a connection between my client and the crimes enumerated in Article II, Paragraph 1-ff.

In the connection I must point out that the Prosecution itself only considered possible guilt according to Article 2, Paragraph 1a, in connection with Paragraph 2 f).

Paragraphs 1a) to 1c) are beyond any possible consideration, for even the Prosecution does not submit that my client as Referent for agriculture in the Economic Policy Department of Berlin NW 7 took any active part in the planning or preparation of an aggressive war.

He participated in these things just as little as he personally committed war crimes or crimes against humanity.

As long as he was employed at Farben, he sat at his office desk and dealt with his special subject. He did his work as hundreds of thousands also did their work.

His activity as Abwehrbeauftragter was confined to the forwarding of orders and regulations from governmental authorities. If he was asked occasionally by the Security Office (Abwehrstelle) to take any active part, he informed his superior about such orders and confined himself to the execution of instructions of his superior.

Apart from the fact that in my opinion my client was not employed in a leading position, he was also working on a level - in order to put this once more expressly on record - which never came under the Law of the Control Council, Art. II, Para. 2-f.

Even today I do not know why, in view of this fact, the Prosecution included my client in this trial. Did it suspect anything particular behind the fact that he had been a Security Officer (Abwehrbeauftragter)?

But there were many hundreds of other persons in Farben apart



from him who occupied the same position, and other tens of thousands of security officers all over the German Reich.

Did the Prosecution find anything particular behind "Office A"?

Office A was only an organization for simplifying and assuring the distribution of security measures ordered by the state during the war.

Did the Prosecution accept the wrong assumption that my client was a real member of the SD (Security Service) in order to include him in this trial?

In this connection I must submit the following argument.

Two days before he was served with the indictment, my client was brought to Nurnberg from Hamburg, where he was living as a free citizen, and was told that he was to appear here as a witness. When my client came to Nurnberg, he continued to believe that he had been called as a witness - having given two affidavits immediately after his arrival - until he was served with the indictment which had been completed long before.

Would it not have been better to have subjected him to a detailed interrogation, to have told him that he must now defend himself, since he was to be indicted?

Then a great many things would have been made clear, in particular the part played by my client with respect to the S.D.

My client was, in any case, not a member of the S.D. in the sense required by the IMT judgment.

In 1934 he became a member of the Reiter SS (SS Cavalry), that organization which the IMT described as non-criminal, and he remained a member of this Reiter-SS until 1941, when he was drafted into the Wehrmacht.

However, it is true that my client had connections with the S.D. These connections existed until 1939. They ceased when the Chief of the S.D., OHLENDOERF, was no longer interested in information which

could only be described as elementary instruction in political economy, and when, on the other hand, my client approached this office with so many request that he not only made himself a nuisance but became suspect.

In the following, I shall deal with the manner of my client's activities for the S.D.

In the first part of 1938, he frequently provided the S.D. with reports and information on economic problems. He acted with the full approval of Dr. KRUEGER, the deputy director of NW 7. At the same time, Dr. KRUEGER made use of this connection with the S.D.

There were many things in the Third Reich which could be more easily settled through connections with such an office than if these connections were lacking. Foremost in this respect was the assistance which Farben wished to give to various German Jews, in order to enable them to go abroad. That was a noble but not an agreeable task.

Whoever is familiar with German conditions knows that it was unpleasant even to enter the Reich Security Main Office and to conduct negotiations there with people in authoritative positions. Therefore everyone was glad that von der HEYDE undertook to do this however, as a member of the SS, his intervention on behalf of the Jews could not have continued with impunity for any length of time, and since the economic information which the S. D. had received from my client in the beginning was no longer new or interesting relations became visibly cooled, so that OELMLINDORF, the Chief of the S.D., answered my questions put to him in the witness stand here, in the following manner; (German transcript page 4522ff):

"Question: Witness, you said that a certain special activity of the defendant von der HEYDE ceased in 1939. Would you tell me please, at approximately what time in 1939?

Answer: When I said 1939 I meant that that was the latest pos-

sible date. I am unable to give you a more exact date. It may quite well have been in 1938.

Question: Witness, what was this actual duty of the defendant von der HEYDE at that time? If I understood you correctly, you described him as a confidential agent (Vertrauensmann)?

Answer: Yes, "actual duty is, however much too strong an expression. (sachliche aufgabe) The position which Herr von der HEYDE held in relation to the S.D. (Security Service) can be understood only if one views the initial period of the S.D.'s existence, and if it is borne in mind that even the slightest good will with regard to the giving information on certain technical problems was valuable to the S. D.

Q. Was he paid for this work?

A. Of course not.

Q. Did he work in your office?

A. No.

Q. About how often did he come to your office?

A. That I cannot tell you for certain, because I myself saw him only very occasionally.

But it was no doubt customary for him to discuss matters with the head of the industrial section once or twice a week or a fortnight during the early period.

Q. Did Herr von der HEYDE denounce anyone to you?

A. He never did that, and it would moreover have been quite out of place as far as we were concerned, since we were not interested in denunciations.

.....

Q. Then the importance of the defendant von der HEYDE must have been very slight as far as you were concerned.

A. It was so slight that I, at any rate, was not interested in promoting this contact, nor in affording him any of my time for the



purpose of discussing technical questions with him." ...

Perhaps it may also be of interest to this Tribunal, with regard to the assessment of OHLENDORF's statements, to hear the characterization given to OHLENDORF in the judgment against him on 8 and 9 April 1948, transcript page 7010.

There it says, and I quote:

"Whatever the deeds for which OHLENDORF must be held responsible, he need never feel guilty of taking an evasive stand in the witness-box."

During the course of the trial, the Prosecution has attempted to prove, by means of correspondence exchanged in the year 1939 and relating to a marriage permit for which my client had to apply, that he did in fact belong to the S.D. and not the Reiter-SS.

This exchange of correspondence arose from the fact that approximately in May 1939, when my client announced his intention of marrying in May 1939, when he was told by the competent official that the marriage of a member of the SS could not take place without the legally proscribed approval of the Reichsfuehrer-SS. Therefore he had to obtain the marriage permit.

However, whenever my client himself appears as the writer in this exchange of correspondence - which I deal with again in my Trial Brief - he only describes himself as "honorary collaborator of the S.D. Main Office".

In no place does he describe himself as "Member of the S.D. Main Office."

This he would, however, have been bound to do, had he actually been a member of the S.D.

For its part, the Prosecution has also pointed out that there is a card index card, bearing the additional note "Fuehrer in the S.D." alongside the first entry recording the promotion of my client in 1938 to the rank of Untersturmfuehrer. This additional note

9 June ~~A-111-16-9~~ Stewart (Katz)  
Court 6, Case 6

does not appear in any of the subsequent promotions.

We know today the value to be placed on the accuracy of such  
card indexes.

At that time it was of no importance to the person keeping the index whether the individual indicated on the index card belonged to the SD or the Reiter-SS. He probably regarded the SS as just another unit.

I should however like to refer to the question which the worthy judge Curtis G. SHAKE put to the Prosecution, page 12766 of the German transcript:

"Was this card made out by von der Heyde?"

The answer given by the Prosecution was:

"That card was not made out by him."

The clerk in charge of the index could not in effect make any member of the Reiter-SS into a member of the SD, but he could fill in the index-card wrongly or hastily or incompletely, and that is what happened in the case of the index clerk in question.

I am not just saying this because it is the explanation most favorable for my client.

I also offer as proof the fact that only the first promotion was accompanied by the words "SD Fuehrer", while this remark was not added in the case of the other promotions.

If the index clerk had acted correctly, he should have written "promoted by the SD" in the case of the first promotion. That would have made it quite clear correctly that the promotion had been instigated by the SD, but had actually taken place in the old unit of the Reiter-SS.

But the fact that the remark "SD Fuehrer" does not occur again in the case of the other promotions shows that when subsequent entries were made there was nothing to indicate that von der HEYDE was a member of the SD, and therefore this entry was discontinued.

I have already pointed out in the above that von der HEYDE also was promoted, the last promotion taking place in 1941. In the examination of my client Erich von der HEYDE I referred to the fact of this promotion.

It is correct that his promotion in 1938 was primarily due to the intervention



of the SD.

In the same way as others volunteered to help with collections or acted as auxiliary police, so von der HEYDE was active in the young, but increasingly powerful SD, giving instruction in the rudiments of political economy.

Von der HEYDE deserved some reward for this, and since the SS with its steady growth could afford to appoint leaders, my client was promoted to Untersturmfuhrer.

In this connection OHLENDORF makes the following statement (German Transcript pages 4528/29, English Transcript pages 4508/9)

Question: Witness, you have spoken about the importance of the defendant von der HEYDE here. Now, the defendant von der Heyde was promoted as an SS man. How do you explain this fact in connection with the opinion which you have just given us?

Answer: Earlier, I was asked whether a confidential agent ("V-Mann") i.e. von der HEYDE was paid for his work, and I testified that they did not get paid. Therefore promotion was the only thing that we could offer to our confidential agents..."

My client Erich von der HEYDE's own opinion of these promotions is best shown by his own statement: page 12729, of the German record; English pages 12429/30).

Question: Another question, von der HEYDE: Mr. OHLENDORF discusses the significance of the rank of a Hauptsturmfuhrer. I do not want to discuss this rank here in any way, but I want to ask you quite personally, were you very proud of this promotion?

Answer: No, as a Reserve Officer, I did not take seriously the wearing of a uniform in any organization, or any promotion in any organization.

QUESTION: Would you perhaps explain that; what do you mean did you take it seriously?

Answer: The rank in an organization - for instance the rank of Hauptsturmführer in the SS - never seemed comparable to me to the rank of a captain in the Wehrmacht. I always had the feeling that it was merely a pseudo-rank - that is, that an attempt was made to express more with it than really was behind it.

Question: You yourself were already an officer in the Wehrmacht?

Answer: Yes, I was a reserve officer."

It is, however, an established fact that my client, Erich von der HEYDE, never lowered himself by supplying the SD with information which was comparable to a denunciation.

On the contrary, he used his connection with the SD to the advantage of many people who were grateful to him, so that only good came of a connection which the Prosecution is now making the subject of an accusation.

This I can state without alapher, for the facts themselves prove it.

I have to refer to one more point.

My client Erich von der HEYDE joined the Wehrmacht in 1940.

Anyone with any knowledge of German conditions knows that, at that time, men 40 years of age, unless they were already in the army, did not have to be conscripted.

If it had been necessary and if he had wanted to, he could easily have been declared indispensable. But nothing of the kind happened. Erich von der HEYDE joined the army. Perhaps he was afraid of being assigned to the Waffen-SS before long. That would not have been to his liking at all. For it is true that my client wished to disengage himself gradually from matters which were alien to his profession, such as the department of Military Economy or his activity as Security Officer.

The reason for this, however, was not that he considered this activity to be of somewhat ill repute.

Yet he recognized that in this way he was becoming more and more ostranged from his profession and that the work which was gradually being assigned to him no longer had anything to do with the actual scope of his profession.

During the war, tasks connected with agriculture were more and more restricted in favor of war production, and for this reason he took the only course before he became superfluous in his professional sphere as a result of the war.

The Prosecution has also tried to establish a connection between my client and Farben during the time when he was serving with the Wehrmacht. This attempt has failed.

It is true that he still carried out a few commissions for Farben after he had left for the Wehrmacht. However, it was after all the firm for which he had been working for 15 years and to which he wished to return after the war.

Therefore, if he was asked by his firm to help in this or that manner, it was only natural that he should do so. If he was able to, and was given leave for the purpose by the Wehrmacht, he offered his services.

However, as early as the beginning of 1942, this was no longer possible to any considerable extent.

What the conditions were actually like is best shown by the statement of the witness EMMERLE, another member of the military office of my client Erich von der HEYDE.

In answer to my question - page 12778 of the German transcript - he declared:

"Question: Witness, do you know anything about any leave which von der HEYDE was supposed to have been given frequently to take care of personal matters in his civilian life?

Answer: I myself cannot remember that Mr. von der HEYDE ever got leave for any special work, and it was very difficult to get special furlough in our agency; our group leader was a very excitable man, and he did not like to be surprised by inquiries from superior agencies which he could not answer without his Referenten".

I cannot conclude this Final Plea without quoting the description of Erich von der HEYDE given by an attorney appearing before this High Tribunal, who was with my client in the same organization in Berlin NW 7 during the whole



period of the latter's activity there.

This attorney stated: on page 12783 of the German transcript:

"It is always difficult to describe a person in a few words. Human beings are rather complicated creatures. But the most outstanding characteristics which I felt he had were absolute decency and integrity of character and attitude, and absolute reliability. That he is very sensible and calm, which means one can debate with him very well even when opinions differ."

Today I see many a person whose opportunities of exerting influence were, on the strength of their position alone, on a much higher level than those of my client, Erich von der HEYDE, freed of all responsibility.

I do not object to this, for I only wish the best to everybody. However, I am all the more justified in standing up for the liberty of a man who could bring about nothing, nothing at all, of that with which he is charged here.

THE PRESIDENT: Dr. Henze for the defendant Kugler.

DR. HENZE (Counsel for the defendant Kugler) Your Honors:

The fact that I am the last of the Defense counsel to plead for my client, Dr. Hans Kugler, seems to be, to all appearances due to the fact that he occupies the last seat in the dock. However, there are indeed more profound reasons for it. The High Tribunal will remember that during an interrogation by the Prosecution, the Prosecution's witness Frank-Fahle confessed that it was recommended to him before the beginning of the trial to be co-operative during his interrogations, that otherwise there was still an unoccupied seat in the dock. I also know from utterances of other persons who were closely connected with the Prosecution's staff and who have perhaps imprudently spoken out of turn, that the Prosecution wanted to have all 24 seats which had been created by the historical trial before the International Military Tribunal, occupied. At one time consideration was also given to taking the aforementioned Herr Frank-Fahle instead of my client. Now the latter has become a defendant and the former a witness for the Prosecution.

I can but guess for what reasons the dice fell this way. At all events I can draw from these facts the conclusion that my client plays a less important part within the framework of this trial, an opinion which was confirmed by the chief Prosecutor's words in his Opening speech on 27 August of this past year. At the end of his Opening speech he tried to prove the responsibility of members of the Vorstand of Farben for the occurrences during the past 15 years. He tried to advance a theory according to which every individual person had the duty to care also about those things which were beyond his own sphere of activity.

He did not make this attempt with respect to the last four of the defendants since they had not been members of the Vorstand of Farben. As an explanation of why my client is here in this room at all, he restricted himself to the statement that, in his opinion, my client

had been one of the most skillful representatives of Farben in planning and executing the spoliation of the occupied territories, and had consequently played a leading part in waging the war of aggression and the unlawful spoliation of the occupied territories.

In stating this he did not say anything about the Prosecution's theory to establish the responsibility of my client and he did not do this subsequently at any other occasion, so that it is up to me to deal with this problem. If I wanted to be frivolous I should finish my final plea with this, since the Tribunal quashed the only affair in which my client had acted independently, - the events which took place in the Sudetenland in 1938, - as not falling under the viewpoint of crimes against humanity and war crimes.

The caution which is dictated to me in such a case by my profession, does not allow me to take such a frivolous attitude. Rather, I am thankful that the missing foundation for the question of my client's responsibility, shows me where I have to begin with my explanations.

If a Tribunal, as in this case, has to judge an event which began 15 years ago it has a task to accomplish which seems insoluble. It has to find out what kind of activity a person had engaged in 15 years ago, what powers he had, what over-all view of the events, and, finally, what responsibility. Half of the age of a man has elapsed in the meantime. Man appears different from what he was at that time, especially if he has spent the past 10 years in Germany.

His professional career set him, in the meantime, other and new tasks, his position has acquired a wider basis, and his responsibility has increased. However, one must make an attempt to re-visualize the past; the actions of that time must be judged from the viewpoint of the then prevailing conditions and of the man's personality at that time.

The following may be a proof for the importance of what has just been said: Today my client has been sitting for 10 months among the members of the Vorstand of Farben, with whom he could not associate



in former times due to his position. The impression of today gives a false picture.

In 1933, which I consider, for the purposes of this argument to be the beginning of the period which the Prosecution considers to be important, and during the following years until shortly before the beginning of the war there were 5 members of the Vorstand in the commercial sector of the Sparte for dyestuffs, who were superiors of my client; of these only one is present, so that it appears as if my client had been, during the past 15 years, the principal advisor of his superior. This was not even the case during the subsequent time of war. Until shortly before the end of the war another commercial member of the Vorstand of the dyestuffs sales department was actively working there, a Herr Waibel, who is repeatedly mentioned in the documents and who likewise was a direct superior of my client. It seems to me to be significant to take this into consideration when judging the extent of my client's responsibility.

As I happened to speak of Herr Waibel I should like to point to one thing which indicates that, in his capacity as head of the sales department for some of the countries of South-East Europe my client was also not as independent in all things as one might suppose. Herr Waibel considered it to be his special sphere of tasks to supervise Farben's relations with the Foreign Organization of the Party.

The witness Dr. Overhoff testified here in regard to this on the occasion of his interrogation by my colleague Dr. Simers. This whole question in particular, to which the Prosecution attaches considerable importance because it is under the impression that through its relations to the A.O. (Foreign Organization of the NSDAP) Farben contributed substantially to the preparation for the aggressive war, was therefore by and large not up to the free discretion of my client. He rather had to stick to the general line of policy which Herr Waibel, in collaboration with his Vorstand colleagues, considered as advisable.

What importance Herr Waibel attributed in this connection to my client is shown by the fact that he did not consider it necessary to invite him in the year 1942 to the dinner which he gave to the Foreign Organization of the Party, the A.O. in order to - as the witness Overhoff testified - improve in some measure the strained relations with the A.O. Let me remind the High Tribunal of the fact that the same Herr Overhoff gave his opinion in regard to different Prosecution documents which were supposed to have been connected with alleged propaganda and espionage activities. He was able to do so, as this was part of his sphere of activity, the sale of dyes in South American countries. In addition Herr Overhoff stated that his direct superiors had been Herr von Schnitzler and Herr Waibel, and therefore not my client. It is not my task to evaluate the statements made by Herr Overhoff. I would merely like to point to the fact that this concerned events which were outside of my client's sphere of activity and that they therefore could not be criticized or influenced by him.

Now if I try to picture which position the 32 years old Hans Kagler held within Farben when Hitler came to power and Farben was supposed to have allied itself with him, Hitler, then I have to show that my client up to that day worked exclusively in the Executive Office of the predecessor firm of Farben in Hoechst near Frankfurt, and later on in the Executive Department for Dye Sales of the amalgamated Farben, and that he dealt exclusively with questions of international collaboration in the field of coal tar dyes. He was drafted for the preliminary work of drafting the different cartel-agreements, and he has later on also taken part in the different cartel negotiations with Swiss and French dye producers and in 1932 participated in the negotiations of the Tripartite Cartel with the I.C.I. Thereby I do not intend to claim that my client's sphere of tasks was unimportant and that his position of minor importance. He was certainly on the way to develop into an excellent exceptional expert in this field and he could probably have been a valued

advisor of his superior.

It is only my intention to show that up to the year 1933 he was exclusively active in this field and that he was also not yet entrusted with the actual business of dye stuffs sales. At that time he was not yet within the inner circle of the Dye Stuffs Committee (Farbenausschuss), the committee (Gremium) which worked on the decisive problems of the dye Sparte. Only five years later was he appointed to this committee. In 1934, at the age of 33, he was appointed to a position in the active sales division; he was entrusted with the management of the sales department for dyes going to different countries in South-eastern Europe. Not until 1939 was he appointed to the Southeastern Europe Committee of Farben which served for the uniform treatment of common Southeastern Europe business questions and afforded an insight into the sales policy. He joined the Commercial Committee only in the year 1940.

I draw different conclusions from this:

1. Due to his position Herr Kugler had only a general view of the dye stuff business of the Farben.
2. Herr Kugler had only a restricted view, since besides himself other gentlemen managed sales departments independently, with whom he had nothing at all to do.
3. Herr Kugler had, due to his position, no knowledge of the manufacturing side of Farben.
4. Herr Kugler held only minor responsibility within the large business world of Farben.
5. Herr Kugler had no possibility and no obligation to influence the business policy of Farben.

The final conclusions reached by me out of this are the following: that Herr Kugler can not be found guilty of any participation in the preparation for an aggressive war, since no evidence as to his guilt has been supplied.



I have examined the few facts in which he is mentioned in connection with the documents of the Prosecution dealing with his sales activity in Southeastern Europe and in connection with his activity in the Sudetenland, in my Closing Brief, without coming to the conclusion that he became a causal agent in a war of aggression through his actions.

As I stated already, my client started his activity in Farben by working in the Executive Department of the dye stuffs sales division. This position was held by him up to the end of the war aside from the position he held as a sales agent. For this reason I have yet to deal to a minor degree with the structure of the Executive Department for Dye Stuffs. In his interrogation my client himself has stated that this activity was less independent than that of a sales agent. He testified, as it also became evident from other statements, that the Executive Department for Dye Stuffs was not in charge of the sales departments, nor of the legal department of the dye stuffs division.

This department was, according to its nature, not a department with independent powers. It was rather an auxiliary department whose task it was to assist the business members of the Vorstand in the dye stuffs Sparte, to do preparatory work for them, to assist and to advise them.

However important the fields covered by such an extensive sales business, which was supervised by Vorstand members, may have been, it is not contradictory when I conclude that this department was not independent in any outside dealings. The department operated in executing the directives of its superiors. In such cases these superiors held the responsibility. If a member of this department advised his superior after he had done the preliminary work, then it was this superior's duty, by reason of his better knowledge, insight and experience, to evaluate the given advice and to ascertain whether it was of any value or not. The decision reached in consequences of this was made

on his own responsibility. If his opinion differed from that of his subordinate, then he was responsible for the measures arising out of this from the very beginning. In case both were of the same opinion, then one can not come to the conclusion that due to the assent of the subordinate, which is normally of no consequence to the decision of the superior, he took over any responsibility thereby. In the relation between the subordinate and his superior any participation by assent is as a definition impossible, if I may be permitted to quote the text of the Control Council Law No. 10.

As in a business enterprise normally an absolute limitation of competencies and responsibilities does not take place as for instance in the case of State authorities or in a military organization, I would like, just in order to make my argument more clear, to point to a matter decided before a local Military Tribunal. I believe that this comparison might be of some benefit. In the trial against several Generals, (Trial versus Weicha and others, Case VII) the Military Tribunal V concerned itself with the position of the two defendants Foertsch and von Geitner. Both were Chiefs of Staff attached to Army Commanders in Chief. In the rules of conduct given in the handbook for General Staff Officers of the German Wehrmacht, the following sentence is contained: "The leader carries the responsibility for the deed. The General Staff officer is aid and advisor."

The Military Tribunal acquitted both defendants because they did not have any power of command of their own in connection with their advisory activity. They were not held responsible for matters in which they had only assisted as subordinates. As I already stated, conditions in the Wehrmacht are different from those in an industrial enterprise. Nevertheless, it is a question of fundamental importance which can also be quoted for the decision of the present case.

In the proceedings against Flick and others (Case V), which Military Tribunal No. IV had to decide, the defendant Flick was found

guilty in the "Rombacher Foundry" affair. The defendant Weiss, Burkart and Kaltsch were his advisers. In the judgment on 22 December 1947, reasons given for the Tribunal stated the following:

"Weiss, Burkart and Kaltsch had fairly small roles in this transaction. They were Flick's hired employees without any capital interest in his enterprises. They furnished him with information and gave him advice. The decisions, however, lay with Flick."

The Tribunal concludes this paragraph with the following words: "We cannot see any guilty offense in their conduct for which they can be punished now."

The above-mentioned trial against Flick and others was the first industrial trial which had to be decided by one of the Military Tribunals here. It ought to be proper to draw the parallels which I have drawn.

Besides that, attention might also be called to the following with respect to questions of fact. In my presentation of the evidence I have demonstrated that the principle in the Farben Executive Department that every employee was under the Manager of this Department was broken. This applied to the member of this Department, ECKART, who made his reports directly to the business Vorstand members of the Farben dye-stuffs Sparte.



I have gone into this situation in greater detail in my Closing Brief. I have thereby sketched the position which my client held within Farben. I request that the Tribunal take this into consideration when it comes to finding the judgment.

As I explained in my Opening Statement, in accordance with the division which has been made between myself and my colleagues I was to discuss chiefly those events which occurred in autumn 1938 in the part of Czechoslovakia which we called the Sudetenland. Since the Tribunal decided in advance that these events cannot be condemned as crimes against humanity, as they are events which occurred before 1 September, 1939, and that they cannot be considered war crimes since there was no question of any military occupation of a part of Czechoslovakia, I have only had to examine these facts from the point of view of participation in the preparation of the war of aggression.

I should, therefore, like to devote a short time to the events which led to the annexation of the Sudetenland to the German Reich in 1938 and to the acquisition of the Aussig and Walkenau plants of the Prager Verein for Chemical and Metallurgical Production. The International Military Tribunal described the annexation of the Sudetenland to the German Reich as a criminal act and as an act of implementation in planning and preparing the war of aggression. It stated that Hitler did not intend to abide by the Munich Agreement. According to Ordinance No. 7 these findings are binding for the decisions of other military tribunals. I do not intend and see no occasion to comment in any way against them.

However, I ask to be permitted to point out the following:

One must make a clear distinction between the historical-political event which was set in motion by the measures of the German State leadership, that is to say, of Hitler, and the measures which the executives of Farben adopted at this time. With the first named development, which began with the activity of Henlein, the representative of National Socialism in Czechoslovakia, then led to the investigation

of the British expert Lord Runciman, and finally found its conclusion when the Great Powers at the time, England, France, Italy and Germany, signed the Munich Agreement, the executives of the I.G. Farbenindustrie had nothing to do. Participation in these measures has neither been alleged nor proven.

In so far as the conduct of Farben in this connection is concerned it must be stated that it was set in motion by the reactions which political events had on the economic situation. The documentary material has resulted in the following picture: After the annexation of Austria and the consequences which this territorial alteration had for the Farben concern the executives of Farben began to be interested in the consequences which might result if parts of Czechoslovakia should come into the German sphere of influence. In the beginning these considerations were not very clearly defined or systematic and were really aimed more at preventing any disadvantages which might arise from the fact that the Farben organization in Czechoslovakia was not so formed that it could stand up against an investigation by National Socialist Party agencies. The Prosecution has called particular attention to a conference on 17 May 1938, the records of which must leave one convinced that there can be no talk about any systematic action at that time. Herr Seeborn, the Manager of the Czechoslovakian Sales Agency, the man in whose honor the meeting was held, has perhaps found the right word for it in his statement when he says that it was all "extremely amateurish". Whereas other firms, as the Prosecution proves, had already established contact with the German authorities at the beginning of the year in order to acquire some influence over the local industrial plants in the event of the annexation of the Sudetenland, Farben, did not hold its first conferences with the Ministry of Economics until shortly before the Munich Agreement at a time when there was talk in the German and international press of the possibility and justification of the separation of a few areas. This occurred at a time when the heads of the Association

for Chemical and Metallurgical Production in Prague had already undertaken steps themselves in order to establish a connection with a German enterprise. This enterprise was the Ruetgers Worke, the manager of which, Karl Friedrich Mueller, has appeared here as a witness for the Prosecution. He testified that he discussed plans with reference to a sale with the heads of the Association at a meeting in Aussig. Since the men in charge of the Prager Verein were no longer in Aussig after the conclusion of the Munich Agreement, as the Prosecution witness Dvoracek has stated, these conferences were held at a time when the Farben executives had not yet negotiated for the acquisition of the Aussig and Falkenau plants. The heads of the Association for Chemical and Metallurgical Production had already at an earlier date taken into account the possibilities which the future might bring by sending one of their principal employees, Walter Neumann, to Aussig in order to protect the interests of the General Directorate in case territorial changes should occur. Herr Neumann has testified that he arrived in Aussig on 23 September 1938. Measures which are calculated to serve for the preparation of a war of aggression cannot be measures which were taken subsequent to it. Otherwise they cannot be preparations. The measures which the Farben executives took up to the conclusion of the Munich Agreement were steps of this kind and cannot be considered as preparatory acts.

The Prosecution wants to prove the existence of the subjective elements of the crime by knowledge or, more concretely expressed, by representing the final consequences which the individual could draw from the historical events of that time, or almost necessarily had to draw. In order to avoid false conclusions I must devote a few more words to this point. How did the events of the time appear to a contemporary? The opinion of a contemporary at the time is alone important. I might, therefore, be permitted a remark about public opinion at that time.

On 17 May 1938, on the day when the conference in Berlin was held,



at which several Farben employees occupied themselves with the Czechoslovakian problem, the Leader of the Sudeten Germans, Konrad Henlein, was in London and discussed the question of the Sudeten Germans with leading Englishmen. The London "Times" wrote:

"Henlein's visit to London is an extremely gratifying expression of the desire which the leader of the Germans in Czechoslovakia has to find a peaceful solution. Whatever apprehensions one had before his arrival nobody can have any more doubts on this score now."

The Swiss newspaper "Journal de Geneve" reported on 18 May 1938 that Churchill had received Henlein, and expressed himself as follows in connection with this meeting:

"I was extremely happy when I discovered during the course of my conversation with Henlein last week that the prospects of a friendly agreement between the Czech government and the German population were better than I had really expected."

When Lord Runciman's mission of investigating the Sudeten-German question became known, "Daily Telegraph" in London, in the beginning of August 1938, wrote that there was no reason whatever to doubt Hitler's good intentions of realizing a peaceful solution.

About ten days later, "Journal de Geneve" devoted a leading article to the Sudeten-German question and wrote, among other things:

"We wish to repeat: We do not impute to Hitler the least inclination to war."

On 16 July 1938, there is an editorial in the "Journal de Geneve" with the caption "Views of the Sudeten-Germans", in which the author gives the following outline sketch, to which must be said that the opinion reproduced there was a very common one, and could be imputed to a large part of the German people as their opinion:

"It is well possible to sum up the views of the Sudeten-Germans as follows: Up to 1918 we lived under the rule of the

Austrian Empire. The fortunes of war have made us Czech nation-als without that we were asked about our national preferences. At the moment of this change of our lives, our political and philosophical ideals were those of the liberty of the individual, the recognition of his historical culture, his language and his mentality. We did not think of anything else. Unfortunately, the Czechs, suddenly risen to be the masters, did not understand our wishes or, if they understood them, did not intend to satisfy them. In Prague they believed that centralism would solve the complicated problem which our existence within a state, which was not the state of our choice, constituted.

practically soon, they subjected everything to the process of becoming Czech. Certainly, we were granted theoretical rights and personal guarantees by the constitution and the laws, but the gendarme, the soldier, the rural supervisor, and the teacher, too, who were sent to us from the capital, they all know much better their official prerogatives, which they sometimes misuse than our rights by the constitution. Properly speaking, everywhere in the entire country one speaks, acts, and is guided by things Czech, and in the course of those 20 years we became isolated, and stood like lost people, in the midst of Czech life."

I wish to supplement this picture of the Editorial writer of a Swiss newspaper, known for its anti-German attitude, with a few remarks. The Sudeten-German problem in Czecho-Slovakia is older than this state itself. That it is a serious problem was even admitted by the English charge d'affaires, Lord Runciman, in his final letter to the English Prime Minister in September 1938, as the American historian Walter C. Langsam confirmed in his book "The World since 1914," published in 1943. Czechoslovakia at its founding had a German minority of 3.3 million people. It is therefore a political population problem which was known before most people knew Hitler, even by name.

This was the state of affairs which at that time occupied the minds of the European public opinion for months. What the public's attitude was, has been shown by me right above. When, thereafter, the great powers had found a solution of this question, the contemporaries could not well suppose that the English Government, which had a decisive influence upon the events, was convinced that Hitler was preparing a war of aggression. Even today, the ultimate historical background of these events has not been fully disclosed. A few days ago, as I see from a newspaper, the French Leader of Socialists, Leon Blum, dealt anew with the events of autumn 1938. He points to the historical fact that, shortly before the Munich agreement serious attempts were made in Germany to overthrow Hitler's regime, and that at the instigation of the then Chief of the General Staff, Halder, an emissary came to London in order to achieve that Chamberlain should not



yield during the negotiations, so as not to strengthen Hitler's position by a new appeasement, and thereby to wreck the plans of the German resistance movement. This emissary, as Leon Blum is in a position to state had a talk with the then diplomatic advisor of the English Government, Lord Vansittard. The result was negative. Chamberlain flew to Munich, and surely unwittingly, obviously and considerably strengthened Hitler's position in Germany and in the world. From this onemay well conclude that Chamberlain, one of the principal actors in this historical event, did not believe in Hitler's absolute war like intention, as the International Military Tribunal, looking back, has established. How could, under these circumstances, a person living in Germany be expected to have known of Hitler's preparation for war, without proving that he had special knowledge?

I think I may disavow with going into further details in view of the above mentioned decision of the Court. If the Prosecution wants to infer from the activities of the IG during this period that they knowingly participated in a preparation for war, it would have had to prove it. It failed to do so. In particular, it was unable to furnish proofs that the production of the newly acquired plants of Aussig-Falkenau was reorganized for the purpose of increasing the German war potential, with the intention of advancing not only armaments, but also a war of aggression.

If now, at the conclusion of my plea, I again come to speak of my client, I wish to say the following for a better understanding of his character:

Herr Kugler has worked for Farben 24 years. He began when Germany suffered under the consequences of the previous war. The rising German industry of coal tar dyes had suffered particularly heavy losses; it lost, among other things, its possessions in neighbouring France, which it had built up in peaceful pioneering work. Hoechst, the place where my client worked, was at that time occupied by the French Army of Occupation. He took part in the peaceful work of reorganization carried on in the

subsequent period. It was a peacetime job of almost 20 years' duration, when a new war broke out, which he could not hope for, but which he had to fear. The dyestuffs business was, for a large part, based on exports. It could not profit from a war, he knew that from the last one.

I said just now that my client had worked 24 years with the IG. I may as well increase this span a bit, and say correctly, that he worked 26 years for Farben, by including the period he worked as an employee of the American Farben Control Office, up to his arrest in the past year. In this work too, which served rather more the purpose of historical research, he endeavoured to contribute his share in clearing up the past, always convinced that nothing reprehensible had occurred in the past.

With the same conviction my client also took the stand on his own behalf, and tried to elucidate and to explain, as far as he was in a position to do so. Thus, his testimony may be evaluated, be it that he gave account of his former scope of work, be it that he spoke about other incidents, which he had come to know from the sphere of work of the Sales Combine Dye Stuffs, as the only member of which he here appeared for justification, be it that he disclosed the knowledge he had gained by his activity, after the German collapse, by a study of the files in the Control Office.

On the strength of this conviction, he knowingly refused to limit his statements. On the other hand, he spoke as a man, who looks retrospectively at the events tempered by the knowledge of today, but not from the same point of view, as he saw them at that time.

I, therefore, express the hope that the high Tribunal has gained the conviction, that my client gave the right answer 10 months ago, when he, upon the question of the Court, whether he pleaded guilty or not guilty, gave the answer of not guilty.

THE PRESIDENT: So that we may not interrupt the next speaker too soon after he starts, the Tribunal will take its recess at this time for fifteen minutes.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

DR. SILCHER (for the Defense):

May it please the Tribunal:

In this trial formally only the twenty three defendants in the dock are indicted and not the firm I.G. Farben. However this firm from a moral point of view is the invisible defendant who in addition to those twenty three men has been mentioned time and again in this trial. Your Honors only need to read the indictment in order to gather therefrom this inescapable impression. Therefore in the world's public opinion as well, this is in reality a trial against the firm I.G. Farben. For this reason alone it seems necessary to speak once in the course of the defense of I.G. Farben and to defend this firm. Therefore the defense has deemed it proper to draw in addition to all the other pleadings an overall-picture of I.G. Farben. And this task was assigned to me who for long years as you know was a member of its staff.

Essential parts of such a canvas of I.G. Farben would be missing today should the charges which presently are voiced in the general public be passed over in silence. This indeed would mean a closing the eyes when confronted with such charges. This overall picture shall be presented now in this statement being the last of the twenty-five preceding arguments of the defense which, in our opinion, dealt in an exhaustive manner with the different counts of the indictment. Hereby this part of the picture has already been given. Therefore, and in view of the difficulties arising from the limited time available for the pleadings, my task will be restricted in substance to sketching the frame and background, and to call up the vision of I.G. Farben as it was and existed, without considering the charges raised in this trial, in the same way as one tries to screen the character of a man who is indicted for a crime, under the aspect of his being capable thereof. If, accordingly, in view of this scope of my task



this will not be a complete symphony on I.G. Farben I humbly hope, the Gods may grant me the favor that it might become, as one of my friends among the defense counsel styled it, an "unfinished symphony."

The Prosecution gives a picture of I.G. Farben black in black, pretending it to be an overall-canvas. This picture is false for a double reason; not only does the Prosecution present as black points, which are in fact white. Apart from this it leaves unmentioned numerous white points which lie in between. I shall now attempt to draw the true picture of Farben, as I see it and as I have in my heart. Naturally, although this task has been assigned to me by my colleagues and the defendants, this will be a picture as viewed by me personally, and none of the other defense counsel and defendants share any responsibility in or are they bound by the manner in which I shall present the facts.

Our age has frequently been styled the era of chemistry. I do not know whether this characterization will outlive our age. Nowadays life goes at a rapid pace. Maybe in times to come our age will be called that of world wars of of the atom bomb or of atomic power, or are we living already in the area following that of chemistry? In any case, however, the impetuous development through which mankind has passed in the last hundred years must be attributed to a great if not decisive extent to chemistry. It is my belief that mankind will gradually have to turn from the exploitation of limited, irrecoverable materia extracted from natural resources to the utilization of everlasting and inexhaustible natural powers. In the last resort this will mean liberation from the dependency on materia in which we still are entangled. Only then man will be the master of the world whereas nowadays he is its almsman. Along this line it is important as a relief - and transitory solution to economize in materia which cannot be regenerated, to replace it by other substances which are of more plentiful occurrence and to utilize more thoroughly. The researcher goes along this

trail, and it was this trail and no other which led Farben to all its great pioneer achievements: dyestuffs, the synthesis of nitrogen from the air, the methanol synthesis, the artificial fibres, the light metals, buna, the plastics, the process of refining coal as a source of power by means of the gasoline - and lubricant synthesis, numerous chemiotherapeutic agents of vital importance, all the pioneer achievements, of which I attempted to give a survey in the basic information. In this respect indeed Farben had set-up a kind of a slave labor program being the only one it ever had during the whole time of its existence; the program of penetrating the secrets of nature, of wresting those secrets from nature, of making physical agents in an ever increasing degree the servant of man, thus contributing to his liberation from matter, to his progress, his well being, and his dignity, just as it is described so superbly by your fellow-countryman David E. Lilienthal in Chapter III, (page 20), of his wonderful and exciting book on the Tennessee Valley - Authority, which I obtained a short while ago and which I read with enthusiasm as if it were a revelation. There he describes how a kilowatt-hour of electricity is a modern slave that toils untiringly for mankind.

Your Honors may be startled. Is it not the Prosecution who refer to these very pioneer achievements in order to charge Farben with having planned and prepared a war or even an aggressive war? In reply to this I wish to state first of all that there is nothing which man cannot abuse. Every industrial achievement will also be useful in war, it even may be abused for an aggressive war. Technical scientific and industrial developments just stormed ahead during the last century. In no field - as we must admit with terror and shame - was this development used for peaceful purposes only, but everywhere also for destructive purposes harmful to mankind. It is a fact, after all, that industry and technology are man's servants and instruments which he may utilize to make them either a blessing or a curse. The instrument is innocent; man's mind alone decides. And how-

ever pure may have been the heart of an ingenious pioneer, no instrument is proof against being used also by evil men for the doom of mankind. Is it not the same problem which we face in regard to atomic energy? Is the use of an atom bomb a blessing or a curse of mankind? I do not dare to decide. The only thing I know is that the utilization of atomic energy for peaceful purposes would be the most unheard of progress of mankind along the path towards liberation from dependency on materia, towards making use of natural powers. Should the scientists who have worked and are still working on the development of atomic energy give up their work because of its utilization in atomic bombing, with all its horrible consequences? I think, they should not.

It is the same question which the great German physicist, the Nobel Prize winner Max Planck, who died recently, raised in his famous discourse on the purpose and bounds of the exact sciences which, because of an unsatiable demand, he had to hold again and again over a number of years. I heard this discourse during the war in Berlin, and it has remained one of my most lasting impressions. Planck likewise pointed to the incessant and universally threatening abuse for destruction, for war purposes, of the results and advancements of scientific research. He likewise put the question whether as a human being the scientist can accept the responsibility of continuing to create such instruments of destruction, and he finally answered the question in the affirmative, imbued by the confidence and faith that in the end all these advancements must turn out to be a blessing to mankind in that it will learn and grow a moral stature enabling it to use these instruments for peaceful purposes and for its blessing.

Now chemistry is a typical industry of basic materials. Most of its products can be used for peace as well as for war. This has been shown in the course of this trial in numerous instances and the treatise on Farben's pioneer achievements also bears this out in a rather emphatic



manner although this summary which I submitted along with the basic information was not composed from this particular angle at all.

May I remind your Honors that I showed, when presenting the basic information, that of the three Nobel Prizes awarded to Farben scientists for work carried out for or utilized by Farben, two were given for inventions on which the Prosecution based their argument concerning preparation for an aggressive war, i.e., the synthesis of nitrogen and gasoline; and that of the nine Grand Prix which Farben products were awarded in 1937 at the Paris World Exhibition, three were given for inventions and products which, in the opinion of the Prosecution, prove Farben's preparation for aggressive warfare, were decisive factors in German rearmament and were important only in this respect, i.e., our synthesis rubber buna, our light metal alloy hydronalium and once again synthetic gasoline. Nothing shows more clearly the peace-time importance of these products and processes than the way in which the whole world saw them, not as military instruments but as mile-stones of peaceful progress. Nobody could seriously maintain that the heads of the Paris World Exhibition in 1937 wished to reward German rearmament with their Grand Prix.

That were, in the opinion of the Prosecution, the aims and activities of I.G. Farben? We have heard it here, and I have no doubt that we again will hear it tomorrow. I quote from the opening statement which General Taylor made here on the 27th of August 1947:

"..... to turn the German nation into a military machine and build it into an engine of destruction so terrifyingly formidable that Germany could, by brutal threats and, if necessary, by war, impose her will and her dominion on Europe, and, later, on other nations beyond the seas. In this arrogant and extremely criminal adventure, the defendants were eager and leading participants. They joined in stamping out the flame of liberty and in subjecting the German people to the monstrous, grinding tyranny of the Third Reich, whose purpose it was to brutalize the nation and fill the people with hate/ The marshalled their imperial resources and focussed their very formidable talents to forge the weapons and other implements of conquest which spread

the German terror. They were the warp and woof of the dark mantle of death that settled over Europe ... These are men who stopped at nothing, they were the magicians who made the phantasies of "Mein Kampf" come true."

End quote.

I cannot give you a complete picture of all the products and achievements of Farben but let me quote a selection of them: there are the dyestuffs from coal which have just been mentioned as a pioneer achievement, to which, above all, we owe the delightful variety of colors in our present world and which gave the enterprise its name, among them the world-famed Indanthrone-dyes which are sun and rain proof.

There are the numerous pharmaceutical products marked with the "Bayer Cross" which contribute towards the health of mankind, among them the world-famed sisters Pyrazidon and Aspirin. I give you Germanin, the conqueror of sleeping sickness, Atebrin and Plasmochin, the conqueror of malaria, the Salvarsane, the conqueror of syphilis, Euadin, the conqueror of rachitis. I give you the sulfamidides, our Prontosil, Tibatin and Marfanil for the discovery of which one of the discoverers, Professor Domagk of Elberfeld, was honored with the Nobel Prize and which initiated and up to this very day are mile-stones of a new epoch in the combat of numerous malignant diseases. I give you Dolantin and Amidon, the conqueror of pain. I give you the numerous products of veterinary medicine, the sera and vaccines and also the diphtheria serum associated with the name Emil von Behring which has saved the lives of numerous children and made their parents happy. Last not least I give you the numerous dental products bearing the Bayer-Cross and the many plant protection agents with which the farmer, the gardener, the wine and fruit grower wage war against the pests which threaten his products.

Let me put in here a personal experience. I am a passionate alpinist and friends of mine have been on expeditions into most of the high mountain ranges of the world, including the Himalaya and the Andes and Cordilleras

in South America. Laughingly they told me, a Farbon man, how, on climbing down from the lofty peaks into the valleys again, they had found everywhere the Bayer Cross, the first sign of the civilization to which they had returned. In their experience, throughout the entire world, as they put it, on leaving human civilization one left behind the Bayer Cross and as its first sight one re-entered its domain.

I turn now to the synthesis of nitrogen from air which meant and will mean throughout the future, fertilization and thus bread for now millions of people even if Farbon and Germany should not be permitted to continue to produce fertilizer nitrogen by the process which it mastered for mankind. There is the synthesis of gasoline, more generally speaking of fuel and lubricants, from coal and other substances which constitutes a refinement and a more manifold utilization of the earth's slowly but surely diminishing coal supplies. I give you artificial silk and Vistra, our spun rayon chronologically the first spun rayon in the world, clothing for millions of people. I present the light metals, aluminum and our magnesium aluminum alloys, electron and hydronalium which possess some wonderful and striking qualities and which enrich and facilitate modern vehicle and aeroplane construction and also the building industry in which as for example in the U.S.A., light metals are used to a far greater extent than anywhere else in the world. Nothing could be more false than the opinion that has also been voiced by the Prosecution that light metals were a typical and exclusive war time product, just as it is impossible to see why, considering the impetuous development of civil and commercial aviation, every furtherance of aeroplane construction in Germany should be considered preparation for war. There is the newly discovered wonderland of plastics with its extremely manifold and adaptable qualities and potential applications. There is the film which you all know and which is as well known throughout the world as it is widely spread, the Agfa-Film, which has given you pleasure



in the theatre and in a similar manner as amateur photographers or even as amateur cine-photographers with eight mm film and your own movie-camera. A sector of this is the Agfa -Colorfilm which is still manufactured nowadays in our — or I ought to say in our former — Wolfen Film factory and which has opened up a new epoch of films and simultaneously a new epoch of artistic treat, of recreation and relaxation. Over a year ago now it again achieved a great success, even although it did not appear under its own name when the Russians used it for their color film "The Stone Flower" and with it gained the price for the best color film in the film contest at Cannes, whereupon the Russians' phenomenal progress in the field of color films was deservedly praised throughout the entire world.

again I may recall the great joy of my Himalaya and Andes comrades when they discovered that their Agfa-color pictures reproduced the landscape exactly as it has actually been, and our own pleasure at being able to see at least true-to-life pictures of those mountains for which we long. I may quote the fire-protection agents which master the fire, being the scourge of mankind, Sulan which vanquishes an other plague of mankind, the moth, and Igepone, the detergents which has revolutionized all washing methods.

Furthermore, I may adduce our synthetic buna with its adaptable qualities and in this very adaptability so far superior to natural rubber. In addition I may quote synthetic precious stones, magnificent rubies, sapphires, and others, where we have succeeded in reproducing nature's creative process only concentrated into a far, far shorter period than that required by nature, and which are just as indispensable as bearing-stones for precision instruments as they bring us pleasure when used as jewelry.

I may quote Uofatites for the treatment of war, the further development of which by Farben brought about, among others, the solution of the problem of making sea-water potable and thus overcome one of the most torturing and most horrible forms of death, death from thirst or castaways at sea. I may quote furthermore the entirely synthetic Pe-Co-fibres and Perlon fibres, known to you as Nylon fibres, and also Perfoltape and Perfolfoil, which throw over board all previous concepts of durability and sensitivity to acid, in fact all resistance to wear and tear for fibres and foils. I may adduce the cellophane, known to every child in the world with its practically almost unlimited uses such as packing, sealing, binding, and textile materials.

Finally I may recall with regret our friend Otto Scharf, who died during the world war and who revolutionized Europe's lignite mining methods by most thorough and extensive mechanization during the war and whose favorite machine, a gigantic excavator allegedly the largest in the world,

in the meantime left our pits in Central-Germany and has gone East, the way of all valuable materials.

All these, Your Honors, are the products and achievements of Farben styled a firm of war criminals. I think that here another quotation from General Taylor's opening statement would be more suitable, namely, "that God gave us this earth to be cultivated as a garden." To this Farben has contributed to the best of its abilities.

And all of these products were of the best quality. It was the principle, and in the last resort, the secret of Farben's tremendous business success to supply the market only with first class, thoroughly tested and reliable products. In addition, there was a comprehensive and careful system of advising customers on the use of Farben's products, based on the experiences that the customer can only utilize goods to the full and be completely satisfied with the goods and business-connections if he makes no mistakes in using them and does not suffer set-backs by false application, but exploits all the potentialities of the products.

On the basis of similar considerations, we frequently entered into a mutual exchange of experiences with the firms engaged in a further processing of our products and in technically complicated fields of production even joined the manufactures of finished products in order to exploit all the potentialities of our products and to gain knowledge from that further processing for the greater improvement of our own products. And Farben gave these products and achievements to the whole world.

In this trial it has often been discussed and I myself have tried to indicate again in a summarized form in the basic information how Farben made deliveries to the whole world, just as Farben's field was the entire world. I should like to remind Your Honors Briefly of the figures given in the basic information for the proportions of our foreign sales every year up to 1933, altogether 50 to over 57%, for dyes 72 to 77%, for pharmaceuticals 65 to almost 79%.

But Farben did not only supply mankind the world all over with their



goods but also attempted to promote economic development and industrialization of less advanced production fields bearing in mind that in the last resort this was not at the expense of our own business but that in a normal and reasonable world the most comprehensive and valuable exchange of goods can take place only between highly developed and highly industrialized economic areas. These achievements were made possible last not least by the harmonious cooperation and correlated work of our production plants and also, above all, of our research labs the result of which was an eminent enrichment on a mutual basis of working and research fields which by their nature were entirely different from one another. It was an alliance of research, science, technology, and true enterprise, typical of Farben and the only one that Farben concluded and not, as the Prosecution maintains, an alliance with Hitler.

Chemical research deserves a special praise. It is the very nerve of modern industrial chemistry and its law of life. Woe, if it deserts it! It would perish in consequence thereof, gradually but irresistibly and who ever would take away from chemical industry this nerve, would chain it, would strangle it with open eyes and deliberately.

In modern chemistry today's big business in most cases is no more big business in ten or twenty years since in the meantime the pioneer achievements have become common knowledge. Today's research is big business in ten years and therefore it is the law of life of this chemistry just as it was the law of life of Farben to finance from today's income the research of today and hereby simultaneously the business of tomorrow.

Farben had recognized this vital law, had acted accordingly and in this way served the progress of mankind. In this connection I would ask Your Honors to bear in mind the expenditure for research work as shown in the basic information when I presented the survey of the utilization of the entire profits of Farben. Eighty million, hundred million, hundred sixty million Reichsmarks annually, these were the figures of Farben's expenses for research purposes, amounting to five percent, seven percent,

ten percent and once even thirteen percent of the annual overall expenses. How poor when contrasted herewith appear Farben's contributions of a purely political character on which the Prosecution based their assumption of an alliance of Farben with Hitler and which I also showed as part of said survey, being only 800,000, 600,000, 200,000 Reichsmark annually, that is only 0.03 percent and in the end 0.006 percent of the overall expenses!

And what was the result of this indefatigable research? I cannot style it better than by the very words of General Taylor in his opening statement:

"In the laboratories of Farben many amazing experiments were being carried to successful conclusions. New inventions and processes poured forth in a never-ending stream; most of them of inestimable actual and potential value to mankind."

End quote.

Great, therefore, was the value of our patents which numbered around 40,000, of our processes and data, indeed of our research staff as a whole. We, therefore, felt particularly concerned when in the course of the past three years it was repeatedly reported from U.S.A. and England as well as from Russia that German industrial patents and processes constituted the greatest war-booty of all times, a booty of inestimable value that would save the industries of the victor nations ten years of research, experiments, endeavors, expenses and set-backs, and that these patents and processes were more valuable than any conceivable reparations from dismantling factories or from current production. We knew when we heard this that Farben was to a large extent affected hereby. You will understand that we perceived with sorrowful pride and proud sorrow.

Farben allowed the whole world to participate even in these riches: the stream of inventions did not only pour forth; it also flowed all over the world. Farben did not keep in secrecy its inventions but let the whole world share them. Year after year thousands of patents were granted to Farben and year after year thousands of patents found their way into the

world. Among the approximately 40,000 patents there were 30,000 granted in countries outside Germany. Friendly agreements on licenses and exchange of know-how were concluded in a fair manner and to everybody's satisfaction with firms of other countries and thus the technical progress of all partners to such agreements was furthered to a considerable degree. As has been already discussed in this trial, this went even so far that during the war this promotion of technical development in foreign countries was unexpectedly turned against Germany and Farben itself.

But Farben did not only carry on its own research work, it also sponsored on a large scale and in a magnanimous way the purely scientific research work of universities, academies, and other institutes by donations and exchange of experiences without claiming any binding agreements nor equivalents, as was repeatedly shown in the course of this trial. Farben shared the responsibility of free research and science and felt itself its confederate even without deriving therefrom any direct advantage.

The business principles of Farben can be summed up in the simple formula that the only really good and profitable transactions are those by which parties are fully satisfied. It was the trend of thought of the honorable merchant to whom fairness and honest consideration of the interests of both parties is the supreme commandment of a deal, who knows from both decency and wisdom that in transacting business always thought should be given to future transactions with the same partner, who knows that only continuously good business connections really pay, that on the other hand one single transaction however profitable it may be in itself can never be valuable if no other succeed it.

Your Honors will perhaps raise the question whether Farben was a philanthropic undertaking, a moral welfare society. Indeed it was not. It was a commercial enterprise but it knew that ethics and true reason which is farsighted and does not short-sightedly see only the advantages of the next quarter of an hour are usually identical.



During my own career with Farben, I heard nothing more frequently from men of whom the majority are now in the dock -- not as orders from superiors, but as advice from fatherly friends -- than such maxims and precepts as the following: character is more important than all intelligence -- decency -- fairness -- too the line -- Farben doesn't do that sort of thing -- that is not Farben's style. I am and will always be glad and proud of having enjoyed with some of these men a relationship as friendly as can ever exist between people of such different ages and positions.

It was, indeed, cooperation not between older, powerful industrial lords and their younger subordinates, but between free men who cherished confidence in and friendship for each other.

Farben's exemplary social institutions and their outstanding achievements in this field were known throughout the world. That Farben did for its workers and employees in providing fair wages and other emoluments, really commensurate with achievements, conditions and justified claims, in providing sick and old age benefit for its staff, factory dwellings and estates, facilities for the recreation of their workers and employees, could, in itself, fill a whole book. Much of this has been indicated in this trial and also in the basic information and in the pleas made by some of my associate defense counsel.

I do not wish to go into details here, for at this point it is difficult to decide where to begin and where to end, if any mention of it is to be made at all. I only may respectfully remind Your Honors of the following figures mentioned in my basic information: the expenses for voluntary contributions to social welfare alone in different years amounted to 35, 64, 108, 148, and in the end to 190 million Reichsmark equalling 4, 5, and finally 7 percent of the annual overall expenses.

The factories themselves were as fine and the working conditions therein as good as such factories and conditions could ever be. The instruction of apprentices and the training of juveniles in the famous apprentices' workshops of the great Farben plants were known to be exemplary. The principle was to make really capable workers out of these juveniles and thus give them for their life the best that can possibly be given to your people. Naturally I do not wish to say that everything was perfect. No limits are set endeavors to attain perfection, and it can be of course asserted, even of Farben, that more could have been done in this direction. But there were men in Farben and they had set their heart on it and also could make their voices heard who still urges things on along this line. Just as when dealing with its business partners, the

management of Farben, in handling the affairs of its staff, had found out the principle and followed it in practice that enterprise and staff belong together and that there is a synthesis on a higher level for their apparent differences of opinion. Farben actually succeeded in bringing the tragic conflict between capital and human labor which has darkened our lives ever since the industrial revolution of the world, to an extent unequalled by anybody anywhere else; in fact, Farben came very close to solving the problem altogether. Every worker employed by Farben felt himself to be a human being and a valuable individual. Again I hear the question and it was put to me once by the Russians, who accepted my explanations to this effect with scorn and sarcasm and the conviction that I was caught lying the question whether I wish to maintain that Farben had been a philanthropic organization and an institute for the promotion of human happiness. But once again I can reply quietly in full earnest and with utmost confidence that of course Farben was not, but that this was once again one of the points where foresight and reason matched so that on this higher level the apparently irreconcilable antagonism comes to nothing. If your Honors bear in mind this model and socially minded attitude characteristic of Farben towards its staff, imbued by a high-levelled moral sense, as well as the absence of any narrow and arrogant spirit of nationalism as it appeared clearly in the course of this trial and which as well was a characteristic of Farben, would that not lead you to the conclusion that it would be in opposition to all experiences of life and that it would run counter to all psychological probability if Farben should suddenly adopt towards its foreign workers and concentration camp inmates employed in its plants the attitude of a cold and ruthless exploiter? In addition the officials of Farben should not be considered so stupid as to have acted out ill-treatment and provided insufficient food to their workers on whom in the last resort production depends. For it is obvious that satisfactory productivity can only be expected from willing workers, from persons who are adequately nourished and decently treated. Does not the most convincing proof of all this lie in the fact



that practically no cases of sabotage occurred in the Farben plants in spite of the large mass of foreign workers and the considerable number of concentration camp inmates in the one case of Auschwitz. Farben still was and remained a pioneer and advocate of international understanding and peaceful, fair competition which was not particularly interested in giving the world just Farben goods or German goods or American goods, but the best goods. Is this not in the last resort the idea and moral justification of free competition, a principle which your country more than any other so decisively depends on. Give men the best goods available everywhere. That seems to me to be a good slogan for a peaceful, new and better world of wealth, civilization and human dignity. In our opinion it is not in opposition to this attitude if Farben participated in voluntary international agreements, to ensure market regulations which according to the experience and practice of European economies are in the interests of all concerned, and in many instances indispensable. If correctly established and handled, they are in the light of this experience wonderful instruments for the promotion of voluntary peaceful negotiations among the nations. Your Honors will have heard whilst listening to the arguments of my associate Dr. Folckmann, in which in my opinion were most interesting and elaborate, how these agreements as a matter of principle were recognized and adopted as instruments of economic reason in international bodies of post-war times in cooperation with U. S. A.

Economic reason a building-stone for a world which we all have in our minds and know, and in which we all do not live so far although we should like to live in it, the world of freedom of the human being, of the individual personality, of the value and dignity of the individual. In Germany, Farben was an outstanding pillar and ardent champion of this world. The battle which went on without a break and amidst of which we felt ourselves placed, had as its issue - among others, the subjection of the industry and of Farben in particular as its most outstanding pillar to the totalitarian national socialist regime. It had as its aim the

totalitarianization of economy thus to give it a political character; on the other hand, it was a struggle for the preservation of enterprise, of a bold economy directed by economic reason, non-political, and going beyond state - and national boundaries. Economic reason = political power: these are the two slogans to which this difference of ideology can be reduced. Economic reason however was just one basic principle and one more vital law of Farben.

Due to the fact that it always upheld this principle of economic reason Farben succeeded, I believe, through gradual development without repercussions and almost imperceptibly in growing a new type of enterprise which at least showed the direction and contributed to the solution of another problem which to many of us appears to be the fateful question of our age and in which ideological differences in most instances are considered from the very outset to be irreconcilable: the problem of socialism - capitalism.

I believe, Farben had succeeded in any case it had progressed far in that direction - in finding building-stones for a synthesis closing this gulf which, it seemed, nothing could bridge over. By its very existence, by its outstanding achievements in the field of both industrial production and social welfare, by the ideal relationship existing between management and staff, Farben refuted in a conclusive manner the theories of capitalist exploitation of labor, of the enslavement of the proletariat, of the everlasting hostility between employer and worker.

Again I am in the lucky position to refer to Lilienthal's book on the Tennessee Valley Authority. Lilienthal writes at the beginning to the foreword to his book: "It is my purpose to show, based on America's actual experience in one field, that such new places of work, factories and prosperous farms, can be created without there being a need for us to choose between the extremes of the "right" and of the "left", between an over-centralized, all-powerful government and a policy of laissez-faire, between "private industry" and "socialism" or between arrogant state bureaucracy and the predominance of a few private monopolies."

As this is one of the questions which has occupied my mind day and night for years, and in regard to which I have in all consciousness and with extreme tension and excitement followed Farben's development to which I just referred, Your Honors will understand to which degree it impressed me to read those words and that for me they meant a confirmation of my conviction that, seen and dealt with in the light of full reason, this question indeed became meaningless and that in respect of important objects it had already partly become so in the become so in the world. To me it appears relatively unimportant what name is given to it, neither the name capitalism nor that of socialism seem suitable to me nor would they be much to the point. Maybe it would be most appropriate to speak of a system of enterprise conscious of its social duties, of a true spirit of enterprise, however pledged to social responsibility to whom it is a natural and heart-felt necessity to grant to the staff a reasonable part in questions of directing the enterprise.

In the last resort this, as with most things, is a question where men and personalities are the decisive factor. Which system places at the head of enterprises the true entrepreneurs, inwardly pledged to social responsibility, who recognize and realize to the full the value of each individual worker as an associate, and his human dignity?

I would invite Your Honors to take into consideration the career of these men who are in this dock. Through their ability and the power of their personality without connections and sponsorship of any kind, the majority of them came into the Farben management, rising from ordinary small beginnings. It is true indeed, that an enterprise which raised so many men from the nameless masses to leadership in this field has stood its test. This state of affairs indeed meant: "a clear course for the efficient man".

Farben didn't belong to the 23 defendants, and had at all ceased to belong to any individual persons or groups but had become the property of the general public, it had been socialized in a natural way without



compulsion. Farben however became not the property of the state nor of human society generally, which for the most part has neither the talent nor the desire to develop any reasonable business activities. Farben had become rather the property of that portion of human society which was qualified and prepared for it, in other words, simply of such people who deemed it right and had decided to invest their money in Farben shares. Farben had become the enterprise per se.

May I remind Your Honors of the diagram which I submitted as part of the basic information showing how the annual total proceeds were used. The profits distributed to the shareholders were relatively small. Fixed, of course, but by comparison with the unusual importance of their functions and their achievements, the emoluments of the administration were still smaller. Time and again the profits were ploughed back into the business in compliance with the vital law of chemical industry, and consequently also of Farben, to carry on research work all the time, never to be satisfied with what had been achieved, to strive in tireless endeavor and to push on along the path of human progress, keeping the alliance typical for Farben between science, technology and the spirit of enterprise.

And time and again the profits were spent for the benefit of the staff, or, to apply a frequently used phrase, the social benefit was increased, provisions were made for the people who worked for the business, capital and labor, machines and men were thus in a harmonious and blessed union.

In order to fully clarify this, I propose to deal now shortly with the history of Farben's origin. It originated in 1925 from a merger of six leading chemical enterprises. This merger did not come about in an arbitrary way nor was it initiated by industrial lords, thirsty of power as it is nowadays voiced in the public for obvious reasons. Farben did not emerge from any capitalistic considerations of a craving for power but grew together in an organic way under the necessity of a better regulation and reasonable distribution of working fields within their scope of production, driven along irresistibly by economic reasons even in face of an opposition arising from the understandable and partly ardent endeavor of the founder-firms to preserve their independence. This merger did not imply as it is believed nowadays frequently and purposely taken for granted for the owners and managers of these enterprises a concentration of power on a gigantic scale, but on the contrary, it entailed the abandonment of their own powerful position held so far by them within the founder-firms. Although all this appears to me to be sufficiently clear after having given due consideration to the facts, in dealing with this problem, I have met time and again with such a great amount of surprise and scepticism that I deem it necessary to explain these facts shortly. I would invite Your Honors to take as an example, in order to facilitate the matter as much as possible, five companies of an equal size with a stock capital of 100 million shares each in which two major shareholders participate to the extent of 50%, i.e., 50 million each. In each of these five enterprises both of the respective shareholders alone have the decisive influence due to their participation of 50% each, together 100%. Now these five companies merge into a single one; on the basis of the equal size and value of the five companies, the rate of conversion of the old shares into shares of the new company is 1 : 1. Accordingly, the new company

has the same stock capital as the five companies taken together, namely, 500 million. Of these 500 million each of the previous ten shareholders is allocated his 50 million. Each of them participates therefore in the new company to the extent of 50 million equalling 10% of the stock, therefore, owns a relatively small minority. In the new enterprise none of them has a decisive influence; nobody controls the other; each of them has abandoned his previous governing position.

This was precisely what happened when the big six of German chemical industry merged into I. G. Farben. Therefore the establishment of Farben is the only major example known to me of a voluntary abandonment of power due to considerations of a higher order. Is this not the underlying problem amon of disarmament, control of atomic energy, establishment of a world's government which we will have to solve in the near future lest mankind should not perish and our globe not be blown up to pieces by the forces unchained through the tempestuous development of our technical age. The renunciation of sovereignty by the individual states, that is the difficulty which this necessary development has to cope with and which, in my opinion, is the price to be paid for the future of mankind.

Farben, the Vorstand members of which are indicted as war criminals, has demonstrated to the world this matter of cardinal importance twenty-three years ago, without making a great fuss about it, because these men had realized and had the energy to see to it that what was reasonable and necessary was done even at the expense of a painful price. In particular it were two men of a really outstanding character who had both the intelligence and determination to carry out the necessary measures in the face of opposite feelings both in their minds and those of the others. Carl Duisberg and Carl Bosch, both men who have become known also to Your Honors in the course of this trial and who alone on account of the power and trustworthiness of their personality, guarantee that the establishment of Farben was not motivated by mean and greedy instincts of a craving for power, but were the result of human intelligence and reasoning of a high order, a true work of peace.



Hand in hand with the expansion in subsequent years and the corresponding increase of Farben's capital, the splitting-up and dispersion of stock ownership increased more and more. Farben had attained such proportions that it no longer could be upheld by individuals but only by the nation as a whole. Expressed in terms of percentage, there were in the end no more large stockholders. Inquiries made during the war have revealed that the bulk of Farben's stock was widely scattered in amounts of a few thousand marks each. The biggest stockholders proved to be the Belgian chemical firm of Solway, and the three French mother-companies of Francolor. But even their 12 3/4 million equalled no more than 1.5% of the stock capital.

It is an unusual joke and almost a good joke, though to I. G. it is made bitter by this indictment, that its largest or second largest stockholders were precisely those French chemical firms which I. G. is supposed to have robbed and spoliated by means of the Francolor-transaction. Yet, amounts of that magnitude were the exception. On the other hand there was hardly anyone engaged in an enterprise, be it ever so small, any craftsman or pensioner, who would not have owned his Farben shares and been proud and happy thus to feel that he was connected with this enterprise.

This picture would be incomplete if I failed to mention the provisions which the administration of Farben made all the time to protect especially the small stockholder. In every stock-transaction special attention was paid to complying with the justified interests and expectations of the small stockholders and taking care of them.

This too - and for the third time I have the opportunity to stress this point - was not the attitude of a special welfare institution, but again the synchronization of decency, reason and far-sighted self-interest resulted from the realization that the enterprise and the stockholder are to a great extent identical, and that only a relationship between the administration and the stockholder, based on confidence, can justify a state of affairs from which the stockholder will derive pleasure, and in his turn will also be available should the

administration at a time when money is needed or for some other reason require his assistance.

Such a high degree of human development as had been reached by Farben was in keeping with the organization of the top-management, as has been already proved in the course of this trial. There was no autocratic governing top-body, neither in the organization as a whole nor even in the administration, but a truly democratic decentralization, which gave full opportunity for development and activities of individual personalities, according to the principle which stood its test in Farben at all times and which it cultivated and adopted at all times: "Men, not measures."

May I digress for a moment and change the subject.

I am thinking of our administration building in Frankfurt on Main, the master work of Hans Poelsig, the great German architect who could no longer work and live in national-socialist Germany and who died in emigration. If I am informed correctly there was but one single occasion in his life when, with unlimited means at his disposal and without restricting orders from the proprietor, he could draw from the riches of his genius to his heart's desire - for our house at Frankfurt. This house and the entire concept of its lay-out gives expression of the spirit of the world. It is so full of light and so beautiful; it has such a charm of line and elegance; it is so refined in its proportions and in the dignified simplicity of its furnishings; everything is so harmoniously fitted into the landscape that the magnitude, strength and power which it undoubtedly has, seem to be faded completely into the background. The spirit of this house is that of refinement of elementary power and that, as I have already tried to show at the outset, is the principal task and spirit of modern chemistry, and thus of Farben. Look at this house and meditate and with a willing heart and you will detect more of Farben's spirit therein than in documents however numerous and detached from their context.

Small wonder therefore that also the staff were attached to the enterprise by an almost proverbial fidelity, that they had realized

that they belonged together and accordingly felt themselves to be a part of Farben. If Your Honors would go to our big plants to Ludwigshafen, to Hoechst, to Leverkusen - to single out only a few - you would hear the pride and joy and devotedness with which our old foremen and permanent workers speak of Farben. Then you will realize what Farben was.

This fidelity of its staff was in keeping with the international respect which Farben enjoyed throughout the world because of its achievements and its fair business methods. I still remember well the happy experiences I had during business trips abroad because of this high and heart-felt esteem expressed by distinguished men.

In their Preliminary Memorandum Brief the Prosecution speak of Farben's craving to conquer and subjugate others, of its insatiable policy of aggrandizement, of its constant aim to enlarge its realm, its empire. Now, in this trial conclusive proof has been offered, bearing out cases in which Farben deliberately refused right at the outset an important and attractive expansion offered to it. And more than that, as shown in this trial, Farben not only refused to expand but on the contrary wished to reduce the concern drastically, being concerned about having grown too big. It was intended to realize this scheme by issuing convertible bonds, granting the possibility of obtaining shares in affiliated companies. This transaction, in the planning of which I myself participated to a substantial degree and with ardent interest, would have entailed, if carried through to the full, a reduction of Farben's stock by 500 million Reichsmarks on the basis of a stock of 1.4 billion existing at that time as shown in the basic information. The planning of this transaction including all necessary governmental approval was completed by the second half of 1944 ready to be started at any time. This indeed proves that these men who today are in the dock did not crave for power, but lived up to the reason and self-conquest which had sponsored the establishment of Farben in 1925.

Although, as I pointed out already at the outset of my argument, I do not propose to deal with the different counts of the indictment,



I still think it to be my task to show some of the incriminations of the Prosecution against the background of the conclusions to be drawn from the basic information submitted by the Defense. In doing so I would avoid repetitions as far as I have already touched in my statement on certain points of the basic information. I shall not proceed in the consecutive order of the indictment but in accordance with the set-up of the basic information.

The Prosecution speak of the immense profit which Farben tried to obtain and which for a certain time it realized by entering into an alliance with Hitler. I shall confine myself to the observation that figures on gross earnings prove nothing at all about the real profit, but, however high they may be, they might just as well involve a loss, that is, if the depreciation of profit and the expenses are still higher than the gross profit.

Your Honors will know yourselves that little is said about the financial situation of a man, if it is known that he has an income of thousand dollars. One must still know what expenditures and obligations he must meet with this sum of thousand dollars. If you consider the net profit shown in the balance-sheet figures submitted with the basic information, you will see that the net profit, in its trend of development, lagged behind the capital and business expansion enforced by the war. But, however that may be, here these men are accused, and in these instances the data of the various defendants and the examination of the use made of the profit in the basic information have shown with ample clarity and emphasis that these men had derived no advantage or personal enrichment from this business expansion, but that their incomes remained on a scale of incredible modesty and consequently continuously dropped both as to their total amount as well as to their percentage. Whatever the defendants might be reproached with, they never craved for personal enrichment and they never received it.

The Prosecution based its charge of an alliance of Farben with Hitler, among other reasons, on the allegedly enormous contributions of Farben to national-socialism. The figures appearing in the basic information and dealing with the utilization of the total profit have put these amounts in relation to the proportions of Farben showing how ridiculously, and I would even say provocatively unimportant these political contributions of I. G. were, when measured by its standard, now wishing to bother Your Honors at the moment with figures. I would only invite Your Honors to take once more notice of these figures by turning your attention to document book No. II of the basic information and to my introductory remarks thereto which I submitted on May 7, 1948.

The Prosecution maintain that Farben had participated in the preparation to a war. In the basic information I showed that the foreign business of I. G. including the nitrogen business, before the Nazis came to power, equalled 50 to 57% of the total Farben business and in some of the Sparten even up to 77 respectively 79%, and that after the inner-market expansion which took place in the Third Reich and which as a matter of course resulted in a reduction of the percentage of the stubbornly maintained share of Farben's foreign business in the total turnover, said share still amounted to 43% in the Sparten which exported most even to 50, 68 and 70%.

I may refer furthermore to the world-map with the turnover columns and the foreign agencies of Farben. In the last place I would remind your Honors how the particular intensity of Farben's export program showed up at each comparison, I drew in this respect: I think of the comparison which I drew with the remaining German industry, the remaining German chemical industry, with the scope of world's trading in chemical products and the size of business of five other world firms.

And now I would ask you to put the question always raised by criminalists, the question about the motives: What were Farben's reasons for wanting a war? How could war benefit Farben? It could expect nothing but trouble and destruction of its very life and activities.

An enterprise, the very basis of which was world's trade could neither be interested in nor wish a state governed by the principles of autarky nor a policy of violence nor any war at all. The only thing it could be interested in was international cooperation, peace and once more peace. Farben's business was flourishing and because of its outstanding output and products it could be confident of always being one of the leading enterprises in peaceful competition and of making good and solid profits. These men who headed I.G. Farben knew the world. They knew that Germany is poor in raw materials and food stuffs, and, therefore, would be bound to lose a war in the long run, that in fact Germany had lost the first world war for these very reasons. They also knew world industry and particularly that of the United States and they realized to what an extent this industry could be expanded. They knew the sales organization of Farben distributed all over the world. In the event of a war these organizations would have been completely unprotected. Here it was all the more certain that all this would be destroyed during a war, just as it had been in the first world war. One really cannot conceive of these men wishing to risk everything, they had built up during long years of strenuous work.

Through the first world war Farben's firms had lost all their patents to foreign competitors and one really cannot assume that they wanted to take this risk again. Now in this respect, Farben really ought to be



a burnt child that dreads fire. I do not wish here to enlarge upon the high morals and the sincere love of peace of these men, but nobody has ever doubted their being intelligent business men of worldwide experiences, yet, these same men are supposed to have been such simpletons and fools as to want war?

The Prosecution styles the organization of Farben abroad a network of political espionage and propaganda activities. The basic information again contributes to showing the utter absurdity of this theory by analyzing the business of Farben abroad. All countries of the world were important markets for Farben, for this reason the sales organization especially of the Sparten dyestuffs, pharmaceutical, and photographic material which exported more than other Sparten was set-up, for this reason the market observation and reports were introduced. Under these circumstances this was only natural and a necessity, and no enterprise of such a world-wide scope can do without it, if it does not wish to prove its incapability.

I shall turn now to the charges of planning and preparing an aggressive war. The theory presented by the Prosecution is not homogeneous. Its theory number 1) is voiced in the opening statement which General Taylor held in this trial. I quote:

"They (namely the defendants) were the builders of the Wehrmacht... They knew every detail of the intricate and enormous engine of warfare and watched its growth with an architect's pride. They knew that the engine was going to be used, and they planned to use it themselves. Europe was dotted with mines and factories which they coveted and for each step in the march of conquest there was a program of industrial plunder which was put into prompt and ruthless execution. These are the men who made war possible, and they did it because they wanted to conquer."

and quote.

And even in a more precise form we have heard this theory in the course of the well-known press interview which the Prosecution held on the day when the indictment was served, namely, that the Farben men were the real top-war criminals, the real initiators of the aggressive war in comparison to whom the leading national-socialists had been only meaningless puppets,

and that for this very reason the Farben men and the Farben concern should be exterminated. This theory in a striking manner resembles the thesis on the ground of which the Morgenthau plan wanted to turn the industrial state of Germany into a potato field, and this theory in a rather terrifying manner is linked up with the arguments by which the agricultural land reform and the industrial expropriations were and still are justified in the Eastern Zone of Occupation. The Prosecution's theory number 2) states that though the aggressive war was intended and planned by Hitler, the Farben men definitely and positively knew thereof. This theory also can be found in parts of the above-said quotation from the opening statement of General Taylor, and there it is said in this connection, that these men were the guardians of the State's secrets of the Third Reich. This theory runs right through the indictment.

Both these theories contain the most serious and horrible charges which can be raised against Farben. In the last war the world has experienced the horrors and catastrophes brought about by the total war, on the avoidability of which opinions at least differ. For courtesy reasons I would not quote as an example the manifold German theories on this point but will confine myself to quoting the allied standpoint, i.e., that the undoubtedly terrifying horrors and consequences which the total bombing warfare entails cannot be avoided.

From this difference of opinion there can be drawn one indisputable and general conclusion, namely, that the decisive step and the basic evil is the fact that after all war is possible between highly industrialized and technified countries, and therefore every crime fades in front of that one crime: to have initiated a war in a guilty manner. Therefore both these theories of the Prosecution in particular the theory number 1) are in substance the most deadly charges which can be raised against I.G. These theories imply the charges at which the world's public opinion caught its breath when it first heard about them. And these are the counts of the Indictment on which it will depend in the first place whether in the memory of men Farben will continue to live as the criminal monster

which the Prosecution contends it to be or as an unfortunate victim of the joint destiny of the German people.

I hereto note that during the trial both theories have not been mentioned with one single word anymore and we await with tension whether they will perhaps rise up to-morrow in the final plea of the Prosecution. We wonder whether the stinky corpse of both these theories will once again be presented to us after having done its duty against Farben outside of this trial.

Since the Prosecution during the presentation of their case have neither repeated both these theories which for the rest are also inconsistent nor offered any proof thereof, the Defense in its turn could not and had not to argue against them. There remained only a third theory, namely that Farben had to gather from many indications that Hitler planned and prepared aggressive wars and that therefore they had participated deliberately therein by their industrial achievements. In this respect the basic information has given some significant clues.

First of all I would draw your Honors attention once more to a chart which was offered in evidence as a ter Meer document, showing the dividing-up of the turnover of Farbens between old and new production fields. It showed that the turnover in 1939 in the old production fields amounted only to about as much as in 1929 at the period of the highest rate of production and that the rise came from the new production fields. Now it is the most natural thing in the world that new productions bring about new sales which have nothing to do with the old business and therefore do not go at its expense but have to be added to it. At least, this is the natural way of thinking and the reward of industrial progress. On the other hand, you will please bear in mind the comparison between Farben and the other big firms Dupont, Standard Oil of New Jersey, General Motors, United States Steels and the British I.C.I. Will your Honors please remember the remarkable conformity of the corresponding curves of development in the years of 1926 - 1944. On the average we perceive the rise of production until 1929 then the retrograde development



with its lowest point at about 1934, then again the rise beyond the production rate of 1929. For several reasons which I then stated those developments are especially convincing which took place with regard to the staff of I.G. Farben and I.G. I., which is also a European chemical enterprise, and in this respect especially the conformity is simply striking.

Furthermore your Honors will please consider the development of national income in the US and Germany during the years of 1929 until 1941. Even in this respect there was established a conformity of development in both countries, hardly to be believed which finally led to the effect that in 1941 as compared with 1929 the national income in the US had increased by 28.62% whereas in Germany it was 28.51%.

All this shows that the development in Germany, seen from an objective point of view was not decisively influenced by the Four Year Plan and the rearmament, but represented in the first line the result of a common economic development in the world. This shows, therefore, that on the whole especially with regard to Farben, no striking development could be seen in Germany from which there could be drawn the conclusion that a gigantic armament was under way. But the case is certainly even more convincing from the subjective view point of that time; in view of the similarity of the world-economic developments what reasons could induce the Farben managers to become sceptical with regard to German developments and particularly the extent of rearmament, and to suspect plans for aggressive warfare?

But even if the development in Germany as a whole had been precarious from an objective point of view, why then was this especially the case with Farben or why could especially Farben perceive it? The Prosecution assert it and try to give the impression as if Farben had played the dominant role in the Four Years Plan and in the rearmament, as if Farben and the German industry had nearly been identical.

Now, as I have shown in the Basic Information, Farben's share in the German chemical industry - depending upon the relationship of capital turnover - strength of the staff and varying somewhat from year to year,

amounted approximately to from 25.4% to approximately 48.5%; its participation in the whole of Germany's industry amounted only to approximately from 1.4% to nearly 4.7% . Above all it could be clearly shown that when considering the expansion of the volume of business between 1932 until 1938, i.e. during the Four Years Plan and rearmament, Farben not only was not outstanding but lagged far behind the rest of industry and behind the rest of the chemical industry; its participation in chemistry as far as capital was concerned decreased from 48% to 45% and as far as turn-over was concerned from 32% to 25%. Farben's share in the turn-over of the entire German industry and therefore practically also in its production, initially amounted only to 2.61% and up to 1938 that means in the time of rearmament fell to 2.03%. Farben's share in the total of German workers and employees was initially 1.75% and stayed from 1932 to 1938 at a level of about 1.5%. Only in the export field Farben's share increased because Farben held its export rate whereas other German industries did not. In the field of the entire German export from 1926 to 1938 Farben's share increased from 4% to nearly 8% in the chemical sector from around 39% to above 53%. This shows most impressively that the production rises in consequence of rearmament to a greater extent had to be attributed to the other German industries, whereas Farben remained international and pledged to world-wide commitments also in its practical business.

Bearing in mind all these figures one must consider that the share of industry in the total economy only amounted to nearly 40% while the remaining 60% fell to the share of handicraft, trade, traffic, agriculture etc. Considering that Farben's share in the total German economy was therefore 2½ fold less than in comparison to the total German industry that means it figured between 0.6% and about 2% according to the year and the relation which is to be considered.

Even if in the other Germany economy armament production would have prevailed and would have been on a gigantic scale, from what sources these men, the leaders of Farben should have had precise knowledge about the other 95-98  $\frac{1}{2}$  % of the German industry, the remaining 98-99.4 % of the total German economy? It was reserved to the Prosecution to pass over this riddle silently in such a charming manner.

I would like to stop for a moment at this fact which surely is so much surprising for many, that Farben was not at all so big, was not this surpassing and overwhelming giant, as it was so often called. Considering capital, production, or staff, one by one, its share was 25 - 40 % of the German chemistry, 1.5 to 4.7 % of the total German industry, and 0.6 to 2 % of the total German economy, figures which somewhat changed in the course of years. But in contrast to it Farben covered 4 to 8 % of the total German export. That about was the place Farben held in the German economy.

And Farben ranged almost modestly in the number of world firms as I showed in the basic information. Concerning the export it once again held the top for some time. Considering the working capital, it exchanged in a wide gap from the others, with Dupont and I.C.I., the last and last-but-two place. The biggest firm in this respect, United States Steel, was partly more than five times as big. In the total turn-over Farben was generally at the last but one place. Here again initially United States Steel was the biggest one, later on General Motors, every time with about the four-fold of the Farben turnover. Relating the staff, Farben mostly held the third place. In the beginning United States Steel was the biggest one and this again with nearly the threefold size, later on it was General Motors again with the 2 to 2 $\frac{1}{2}$  fold size of Farben.

Just as much as Farben was of international and world-wide standard in its business, it was too in its bearing. Considering everything, what has become clear during this trial of Farben's bearing



against national socialism on one hand and against the world on the other, the result will be nearly of its own the following principle and the following clue: Farben considered itself the champion of peaceful human progress, the advocate of understanding among the nations and of cosmopolitanism, the pioneer of the occidental way of life, of private enterprise and of economic reason. And all this was in such a complete contrast to the national-socialist regime that this divergence could scarcely be overlooked and was clearly recognized by most of the leading men of Farben of today's defendants.

In Germany, no man who felt and thought that way identified himself with national socialism; they always thought and acted for the eternal Germany as a part of the world with her thousands of years of glorious history, of Germany which would survive this epoch of despotism of a small group of Germans who were unworthy of that name and some of whom, as is well-known, were no Germans at all. To such men occupying the like positions in national socialism in Germany two ways were open theoretically. One was that of open opposition or declared passive resistance, the way to refuse the collaboration. I will not deny that this method might have been successful if it had not systematically organized in time by all the German nation, and, what interests us most today, especially of the German industry. However, possible or impossible, this was not done anyway. As matters stood at that time and in view of the way they took later on, a clearly hostile attitude would no doubt have resulted in the immediate requisitioning of Farben by the regime, a complete conquest of this economic strong point by the national-socialism 100% mobilization of the enterprise for the service of the Third Reich.

The second way which alone promised to be successful was that of evasive resistance in order to maintain its main position and thus save the economic reason. Only by this way Farben had the chance to remain independent and free as far as possible, to avoid complete

absorption by the government even to keep itself clean from national-socialism in the main points and thus continue amidst national-socialist Germany to be the brother of the world.

This is the deep reason for many acts on the grounds of which the Prosecution tries to prove the alleged alliance with Hitler. If by such a resistance 100 strategic points have to be defended and the breaking-in of the enemy cannot be prevented in a rate of 30: Should then those other 70 points be abandoned voluntarily? So that the enemy may occupy all 100 positions completely and without any resistance? Such was the state of affairs and that has to be the answer to all the reproaches, having once failed to prove this or that, one should not have remained in one's post any longer.

In any case Farben took the second part and took it with complete and almost astounding success, considering the circumstances. Farben was no national-socialist firm. Up to the very end no real partyman succeeded in becoming a member of the Aufsichtsrat or Vorstand or in obtaining any other really important position in the enterprise. Farben in fact succeeded in preserving in the middle of a national-socialist Germany an asylum for cosmopolitanism for peaceful international economic understanding, for cooperation to the benefit of human progress, for private enterprise and economic reason.

Could anybody be astonished that during the Third Reich, and increasingly during the war Farben was continually looked upon with distrust. It was called the stronghold of plutocracy, the current propaganda term of that era for what is now meant by western democracies. Farben was the most hated enterprise in the eyes of the authoritative offices of the Nazi-regime; international, judaized, plutocratic, nationally unreliable - these were the common estimates and designations used by those quarters of us.

Again and again during the war one was to hear from influential party circles that after the war first of all Farben, this

stronghold of internationalism, that foreign body, that state within the state, was to be liquidated; one was to hear of Hitler's hatred for Farben. With constant sorrow we discussed during the war very often this danger and did not already know the way and the possibility to evade them.

THE PRESIDENT: It will be necessary to take a brief recess in order to make a change on the sound system. We will take a recess and then permit you to go ahead and conclude. You have about five minutes before the recess so find yourself a place within the next five minutes and then we will rise.

DR. SILOHER: We were convinced and unanimous only with regard to our passionate determination to resist to the utmost of our power. We expected attacks threatening our very existence from national socialism or, alternatively from communism. But that the U.S.A., the citadel of free enterprise would be the one to strike the crushing blow that she would fulfil Hitler's testament, that indeed we did not expect.

Farben was not Hitler's allied, but its prisoner forced into services as so many in Germany.

The picture of Farben, of course, has its light and dark sides, as has everything in this world. It happens that the world is not perfect, and also the men who are in the dock today were human beings, not saints.

No human life is without its human shortcomings and failings. There are for instance indolence, fear of personal disadvantages, the urge for self-assertion, lack of courage, of endurance, of public spirit, of clear-sightedness. Within Farben too, this or that human weakness may have played its role in this case or that. But though they may have been shortcomings, they were no crimes, they were certainly not criminal actions. I believe, that it is unanimously acknowledged today that foreign governments would and should have opposed the National



Socialist regime at an earlier date.

Whether these governments made mistakes at the time and whether the mistakes which they made were pardonable or not are debatable points, but it has never occurred to anybody, and I hope, in the interest of human reason, that it never will occur to anybody in the future that these foreign governments committed a crime in acting as they did. The quotation from the wisest book of all nations and of all times, the Bible, remains eternally true: "Who is without sin amongst you, let him cast the first stone."

THE PRESIDENT: Mr. Marshal, will you advise us when the sound track is ready and we will come back?

The Tribunal will rise.

THE MARSHAL: The Tribunal will be in recess five minutes.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

DR. SILCHER: I consider it imperative that the judgment to be passed be viewed from a greater distance and in a closer connection. I do not think, of course, that a sentence dictated by convenience will be passed.

justice and nothing but justice must be pronounced here, and who, better than we in Germany, who have ourselves experienced its horror, knows the dread effects, that fearful consequence, the loss of all trace of human dignity, which follow in the train of justice made the lackey of the state political, when the profound wisdom of the old words "Justitia fundamentum regnorum" and of the gross and at first horrifying "Fiat justitia, pereat mundus" is scorned and derided. But the consideration of the connections and of the consequences is a well-tried test of the validity of our reflections and opinions and it is for this reason that we should consider the connections and the consequences.

In speaking of connections and consequences, I would not imply, however - and this I state in an effort to exclude from the outset, all possibility of mis-interpretation - that the fate of Farben, its final treatment at the hands of the occupying powers, its annihilation in accordance with Control Council Law No. 9 depend upon the result of this trial. This is indeed a normal process in the dissolution of trusts, in the routine of decartellization, a measure such as has been carried out against other firms at which no reproaches such as those made in these proceedings, have been levelled. By virtue of the unconditional surrender of Germany, the occupying powers do, in fact, prescribe the forms in which German industry may and may not continue to operate.

Moreover, Farben felt itself too big and prepared a reduction of its scope and a splitting up. It was not meant to do this in an overthrowing and smashing form of law with careful methods under preservation of the production forces and with the careful maintenance of the interests of all concerned. And I myself would make especially a bad impression, if I would dare to say something concerning that after having as already mentioned taken part in a decisive way at the plan and preparation of this reduction. No, Farben is dead, and I fully realize that I hold a funeral sermon in this respect.

There is much more at stake: It is with dire apprehension, that I

and many others view the Europe of today, plunged deeply in the struggle for its future, that struggle which will determine whether it is to sink completely and finally into chaos, overwhelmed by the rising forces, or whether it will rise again, full of strength, courage and wisdom.

The powers which have to decide that are still irresolute in how far in this battle for Europe the German people and the German industry shall be given a part. But everybody recognizes that the aid of German industry cannot be renounced. The condemnation or acquittal of Farben on the moral issues which your verdict will contain, will be a significant figure in this struggle. It will be of great importance how your Honors will judge the fundamental roll of Farben of the representative of the German industry under the powers of the demon Hitler and his National Socialism. For months now, a tragic saying has been circulating in Germany, "It is not yet clear who won the war, but there can be no doubt as to who lost it: Europe." Do you, your Honors, make your contribution to the suppression of this bitter and despairing utterance. Save Europe! Do not tear down a pillar, on which our own world rests!

Here in Naernberg, we are in an area over which the icesheets passed during the various ice ages. The land was no more to be seen, and no crops would grow. But the land was there, and when the icesheets withdrew, it appeared again, torn and broken, devastated and full of wounds, but still the old, good land, ready to bloom again and to yield its fruits as of old. The ice-sheets of National Socialism, lying on Germany and on Farben, have been smashed by force of the weapons of your country, your Honors, and we stand in front of the devastations and wounds. And fate has arranged it thus, that the smashing blow broke something other too which was no part of the sheets but only covered by them. Thus this happened to Farben.

Think of all this that when you pronounce your judgment, you will pronounce your moral verdict on Farben!

At the end of my plea, let me please refer to my previous words:



"ready to bloom and grow fruits". Some months ago I saw a film which bore, I believe, the title "Hunger". In it, the German people were shown how it was through no ill will on the part of the occupying powers that Germany was enduring hunger today, but that there was simply too little food in the world and that hunger was, therefore, stalking the entire earth. Since the year 1900, if I remember properly, the population of the earth had increased by 130 million people. I began to consider what the future for mankind would be if her numbers continued to increase on this scale. I lay no claim to powers of prophecy, but at the moment, I suddenly beheld as if it were a vision! Perhaps in a few hundred years, perhaps even within a few decades, food for the additional hundreds of millions of people who will by then have swelled the numbers of mankind will be produced in all those areas in which rubber plantations stand today, in the most fertile areas of the world, and rubber will be produced synthetically in a few factories spread over the earth's surface a refined Buna. And these fields and fertile acres throughout the world will bear fruit and yet more fruit, unceasingly, growing ever richer and still more rich with the help of the nitrogen fertilizer made from that nitrogen which Farben has taught men to draw from the air we breathe. And the fields will be ploughed, the seeds sown and the crops harvested by machines driven by liquid fuel, and in other ways, the technical life and the civilization of mankind will be unthinkable without the engine driven by liquid fuel. By that time, the mineral oil fields of the earth will long have been worked out and throughout the world, fuel will be obtained from coal by a process first used at Oppau and Louna. And in the book of history the name of Farben will appear in golden letters as one of the benefactors of mankind and with golden letters beam the names of those men who accomplished this pioneering work.

And history will relate, as we read it now of past times: their fellow human beings accused these men of using their work to further their struggle for world domination, and threw them into prison. I hope, and

confidentially trust that the book of history will go on to tell the reader: How wise, fearless and upright judges investigated their deeds, recognised their innocence, set them at liberty again and allowed them to resume their work in the service of mankind.

THE PRESIDENT: This concludes the arguments on behalf of the defendants in this case. At the next session we shall hear the closing arguments of the Prosecution.

The Tribunal is in recess until nine o'clock tomorrow morning.

(The Tribunal adjourned until 0900 hours 10 June 1948.)

NATIONAL ARCHIVES MICROFILM PUBLICATIONS

Roll 15

Target 3

Volume 43, p. 15,442-15,834

June 10-July 30, 1948

NATIONAL ARCHIVES MICROFILM PUBLICATIONS



# OFFICIAL RECORD

## UNITED STATES MILITARY TRIBUNALS NURNBERG

CASE No. 6 TRIBUNAL VI  
U.S. vs CARL KRAUCH et al  
VOLUME 43

TRANSCRIPTS  
(English)

10 June - 30 July 1948 pp. 15442-15834

Official transcript of American Military Tribunal VI  
in the matter of the United States of America against  
Carl Krauch, et al, defendants, sitting at Nurnberg,  
Germany, on 10 June 1948, 0900 hours, Justice Curtis G.  
Shake presiding.

THE MARSHAL: The Honorable, the Judges of Military Tribunal  
VI.

Military Tribunal VI is now in session. God save the United  
States of America and this Honorable Tribunal.

There will be order in the court.

THE PRESIDENT: You may make your report, Mr. Marshal.

THE MARSHAL: May it please Your Honor, all defendants are  
present in the court.

THE PRESIDENT: On yesterday the arguments-in-chief on behalf  
of the defendants were concluded. Today's session will be devoted to  
hearing the closing arguments of the Prosecution.

Is the Prosecution ready to proceed?

GENERAL TAYLOR: Mr. President and members of the Tribunal.

In summing up at the close of this trial, the prosecution finds  
the case in such a posture as precludes any necessity for an extensive  
rehearsal of the evidence or restatement of the law. The evidence  
has, we believe, been well and truly translated and reported -- thanks  
to the care and precision of the many persons who have worked so hard  
to bring that about -- and the record not only provides an accurate  
and clean foundation for the grave purpose of the Tribunal's judgment,  
but will stand the close scrutiny of the many persons in years to come  
who will seek to test the Tribunal's judgment against the record.

Prosecution and defense alike have made their case and filed  
their briefs. We believe that all questions bearing on a just decision  
have been clearly raised and, with a few exceptions to which we will in  
due course call attention, the argument on these issues has been closely  
joined. If the length of this proceeding has aroused question in some  
quarters, surely in the long run it will be generally realized that

patience has been the best insurance of the rights of those who stand accused. The Tribunal has dedicated itself to the conduct of the trial with manifest devotion to the task at hand. Certainly no one who has followed the proceedings, and has listened to the arguments of the past week, can doubt that the defendants have been most ably represented by counsel, or that they have been accorded the fullest opportunity to establish their innocence.

The proven facts in this case, we submit, present a compelling claim to a firm and meaningful judgment. The prosecution does not come before the Tribunal to pray for a declaratory judgment on naked questions of law. This is a criminal trial. And if the proven facts require findings of guilt — as we believe they do — the judgment must be meaningful. If that is a desirable quality in any criminal judgment, it is doubly necessary in this one. For in this court room many hopes and fears are met. The issues in this case travel far beyond the confines of Nurnberg, and the impact of their solution here will be felt thousands of miles away and for many years to come. In a very deep sense, Nurnberg is the world in microcosm.

My colleagues at the prosecution bench have given their energies unstintingly to the presentation and illumination of the evidence embodied in the record before the Tribunal. That record is now closed, and on this last day we can do little more than strive, by selection and analysis, to reduce this case to such proportions as will enable at least its salient features to strike the mind in conjunction.

Accordingly, we will begin by taking a look at the evidence in this case as a whole. Needless to say, the defendants are on trial as individuals, and it has been the prosecution's task to establish the personal guilt of each defendant as charged. But the common denominator of this case is I.G. Farben, A.G., and the record we have made here is the "Farben record". Later on we will have something to say about the individual responsibility of these defendants for what



what record contains. For the moment, we propose to summarize for the Tribunal, and set in their proper perspective, certain of the major criminal activities which were carried on by I.G. Farben, through its officers and agents.

Of course we do not propose to burden the Tribunal at this time with a comprehensive narrative of the evidence. For that we rely on our briefs and the full record that has been made here. Several narrower aspects of the case, such as Count Four of the ~~Indictment~~, we will also leave to our briefs. Rather it is our intentions to touch on certain aspects of the Farben record which are vital to a true understanding of this case, and which may help to shed light on some of the observations made by defense counsel in their learned presentations during the past week. In developing these aspects of the Farben record, the actions of various individual defendants will naturally be mentioned, but our present purpose will be to illuminate the record of Farben as an institution, rather than to evaluate the guilt of any individual defendant.

.. Counts one and Five.

In approaching the Farben record under Counts One and Five of the indictment -- that is, those counts which charge the planning, preparing, initiating or waging of aggressive war, and conspiracy to bring about any of the foregoing -- we believe that much potential confusion will be avoided if a very simple and elementary principle of criminal liability is kept ever in the forefront of our minds. This principle is that criminal guilt always requires two elements -- action and state of mind. Both are essential. The fact that a man thinks, desires, or concludes is not in itself criminal, no matter how vicious or depraved these thoughts, desires, and conclusions may be. Nor is an act, standing alone, to be judged criminal regardless of the concomitant state of mind or knowledge. All this is very elementary but it is very important, and it has been obscured here in recent days.

Careful observance of these principles is particularly important in connection with the charges we are now examining. This court and others sitting at Nurnberg and elsewhere are being called upon to enforce the doctrine of international penal law - born centuries ago, accepted by all major nations after the First World War, and first judicially applied by the IMT - that the deliberate planning and waging of aggressive war is a crime. That is a doctrine of the most serious bearing to the world and every nation in it, and it has never been of graver import than it is at this very moment. In applying this doctrine to the facts disclosed in this and other contemporaneous cases, it is the high duty of this and other Tribunals to ensure that the doctrine is neither extended beyond the bounds of reason, justice, and hard common sense, nor contracted into a fleshless legal stereotype of no real meaning in these restless times.

On this general theme, we will have more to say when we conclude. What we wish to suggest now is that the elementary legal principle which we have stressed is the best safeguard against killing off this doctrine either by dropsy or malnutrition.

One other general point may well be noted. Some crimes, such as murder or robbery, can be committed by one man alone. Others, such as a combination to restrain and throttle commerce, or piracy, can as a practical matter be committed only by a group of men acting in concert. Upon a few occasions in this court room one might have feared that an effort was being made to persuade us that Adolf Hitler alone planned and waged aggressive warfare, but in serious discussion we assume that all of us here would agree that the crime against peace falls very definitely in the latter category. Indeed, in this respect it far transcends either of the other examples we have given; the scope and magnitude of the task of gearing and tooling a nation to launch a major war staggers the imagination. And it may truly be said, as the IMT pointed out,<sup>1</sup> that in a sense all productive enterprises and services

1. Vol. I, Trial of the Major War Criminals, p. 330

aid in preparing for and waging war; a breakdown in the shoe industry, a failure of domestic communications, or any other breakdown in an important cog of national economy or morale may be a serious setback to a war program.

It is because the above matters are so fundamental to a wise and just application of the doctrine against aggressive war that the prosecution has stressed again and again the fundamental principles of criminal liability. It will profit no one here and, least of all the prosecution, to urge the statement or application of the doctrine against aggressive warfare in such a manner as to sweep within its purview thousands of more or less ordinary men and women. But it will grievously aggravate the risks to which civilization stands exposed — grave as they are now — if this doctrine is withered at the roots by the exoneration of those who are truly guilty of this terrible crime.

The prosecution has endeavored to suggest how, in our view, these basic principles of criminal responsibility should be applied to the crime against peace and to the facts established in the Farben record. It would, we think, be presumptuous to us to attempt an ultimate, all-inclusive definition. It is one of the most magnificent attributes of common law that it is refined and perfected in application case by case. We have therefore attempted to state the elements safely and conservatively rather than to explore the outermost periphery of the concept. As to the requirement of "action", we have suggested that it is necessary to establish substantial participation in and responsibility for activities which are vital to building up the power of a country to wage war. As to "state of mind", it is our opinion that there must be a showing of knowledge that military power would be used to carry out a national policy of aggrandizement in order to deprive the peoples of other countries of land, property or freedom — in short, a policy of conquest.

When we speak of "knowledge", we mean knowledge based on information of such amount and kind as must have brought conviction to a



10 June - M-IU-1-6-Schwab (Int. Garand)  
Court VI - Case VI

man in the position and circumstances of these defendants. When we speak of "substantial participation and responsibility", we mean activity in a responsible capacity directly connected with marshaling the nation's resources for war.

We submit that these standards are as precise as standards of general application in the law can ever be, and that they are conservative in their scope.

Has the evidence established guilt under such standards? We think that the evidence is fully adequate to establish guilt beyond a reasonable doubt, and in a few moments we will touch on certain features of the evidence. But before passing to these substantive illustrations, however, we note with some regret that prosecution and defense counsel have not directly locked horns on this matter. The most comprehensive statement on this score was made by Dr. von Mettler speaking on behalf of all the defendants. It is an able piece of advocacy, but we think the Tribunal will see on further examination that it totally ignores and assumes the nonexistence of the very substantial body of evidence showing state of mind, and that it dismisses as irrelevant the evidence establishing participation. The first defect we will endeavor to remedy by calling the Tribunal's attention, later in this statement, to certain portions of the evidence which, we believe, conclusively show that the defendants knew that the military machine which they helped build would be used to launch a German program of military conquest. The evidence relating to participation we will touch on briefly and immediately.

With Your Honors' permission, Mr. Dubois will continue the reading of the statement:

1. Participation

MR. DUBOIS:

Overwhelming and unanswerable the evidence of Farben's substantial participation in and responsibility for planning and waging aggressive war may be, but irrelevant it is not. Throughout Germany there must have been thousands of men who, on the basis of confidential information, personal contacts, or otherwise, became certain in their own minds that the leaders of the Third Reich intended to and were about to use Germany's revived military might to launch a war of conquest in

Europe, and who knew, when the invasions and wars came, that they were aggressive acts of conquest. No doubt many such men and women were engaged in the type of productive enterprises or services the cessation of which throughout the Third Reich would have hindered the planning or waging of war. But we cannot expect the laborer to lay down his tools, the farmer to unhitch his plow, the doctor to give up his practice, or the businessman to abandon his ordinary course of business, even though these individuals have concluded, on the basis of reliable and convincing information that the political leaders of their country are about to launch an aggressive war, and even though these activities may be of a type essential to the national economy and therefore necessary to the war effort. Such participation in preparing for or in waging war is neither substantial enough nor responsible enough to justify imposing criminal guilt.

It is for this reason that the prosecution has been at pains to prove beyond any doubt whatsoever that Farben's participation in preparing for and waging war was both highly responsible, and extraordinary in its scope and volume. Farben expanded and transmuted its productive facilities in a sustained and phenomenal effort over a period of years to create and equip the Nazi war machine, participated in a major way in the economic mobilization of Germany for war, including substantial participation in the carrying out of the Four Year Plan, furthered the military potential of Germany vis-a-vis other countries by other means, such as the stockpiling of strategic war materials, retarding production in other countries, and propaganda, intelligence and espionage activities, supported the Nazi party program financially and politically, and finally as an integral part of waging wars of aggression and preparing for new wars of aggression exploited the economic resources and the manpower of the occupied countries. The entire matter of substantial and responsible participation in preparing for and waging war has been comprehensively dealt with in our briefs, and we feel that it would be wasting the court's time to say anything more



about it at this late stage of the case.

## 2. State of Mind

In approaching the question whether the Farben defendants knew that the German war machines would be utilized to support a program of conquest, we should bear in mind the obvious fact that, while act and state of mind are distinct elements of the crime, they are not unrelated. It is impossible to look into a man's mind and prove by direct evidence what thoughts or conclusions are present there. In all criminal trials we are forced to infer the state of the defendant's mind by evidence, in a sense circumstantial, of what he did or thought or said, of what facts of common knowledge he must have been aware of, and of what other information was available to him. Therefore, the extensive and calculated scope of Farben's activities in arming the Wehrmacht during the years leading up to the outbreak of war must be considered, along with all the other available evidence, in making a judicial determination as to whether the defendants knew the use to which the German military machine was to be put.

Still another point is worth considering. Dr. von Metzler devotes considerable space to an argument that evidence as to facts of common knowledge throughout Germany — such as political events, speeches, the contents of "Mein Kampf", etc. — is insufficient<sup>1</sup> to establish guilty knowledge of the intention to wage aggressive war. Of course, no such contention has been made. But it by no means follows that matters of general knowledge are irrelevant in determining the state of mind of these defendants. A person's ultimate conclusion, as to such a matter as the existence of an intention to wage aggressive war, is based on a number of facts and circumstances, some of which may be generally known, and others highly secret. The defendants might have drawn very different inferences concerning the significance of many matters had the Chancellor's name been Stresemann or Brüning rather than Hitler, and

1. Closing Statement by Dr. von Metzler, pp. 12-13.

had the government been known as the Weimar Republic rather than the Third Reich. We must not attempt to determine the state of mind of these defendants only by the special knowledge available to them, but by the whole sum of their knowledge and information, and by their own acts as well.

We shall now give a few examples of items in the Farben record which illuminate the state of mind or intent of the defendants in connection with commission of the acts directed to preparation for a German war of aggression. A convenient starting point is May 1936, when Krauch joined Goering's staff on Raw Materials and Foreign Exchange. This is the period that von Schnitzler described as follows:

After 1936, the movement (referring to autarchy) took on an entirely military character and military reasons stood in the foreground. Hand in hand with this, the relations between Farben and the Wehrmacht became more and more intimate and a continuous union between I.G. officials on the one side, and the Wehrmacht representatives on the other side, was a consequence of it.

Shortly after this, the defendant Schmitz, on May 26, 1936, attended a meeting of Goering's staff of experts on Raw Materials and Foreign Exchange, and heard Goering state that rubber and gasoline was vitally important from the point of view of waging war, that the mechanized Army and Navy was dependent upon oil and gasoline, that the waging of war hinged on a solution of the oil problem, and that rubber was the weakest point in the military mobilization situation. We think it is more than coincidence that in April and May of 1936, Farben reached an agreement with the German authorities for the construction of the first buna plant atSchkopau.

The Four Year Plan was announced in September 1936, and one month later, on 17 October, Schmitz reported to the Aufsichtsrat "on the great tasks which Farben has with regard to raw materials in the Four Year Plan as announced by the Fuehrer". In 1937, the details of Farben's

tasks in the Four Year Plan were particularized. In May 1937, the "Bible" of the Four Year Plan was approved and the defendant Krauch personally attended to the details in the planning relating to the fields which were Farben's speciality, namely, expansion and production planning in the fields of mineral oil and synthetic gasoline, synthetic rubber, synthetic fibers, and preliminary products for powder, explosives, and chemical warfare agents.

Furthermore, it is clear beyond a doubt that the official positions, in the Four Year Plan and other Reich agencies, which were occupied by Krauch and other Farben officials, made available to the Farben directors much secret information on the progress of German rearmament. As <sup>1</sup> Krauch himself put it in his testimony:

It was a simple calculation from the figures of explosives to be delivered to calculate how many bombs were to be dropped and how much artillery fire was to be expected.

Such information made it possible for Krauch to point out to Goering in June 1938 that the figures with respect to explosives production furnished to Goering by the Wehrmacht were incorrect, and to suggest the necessary readjustments.

One further factual illustration of "action" as it bears on "state of mind" will suffice. Gasoline and oil, as we have indicated, were perhaps the most critical items in the functioning of the German war machine, and the defendants knew that, in the event of war, the demands that would be made upon their synthetic gasoline facilities would be enormous. In April 1939, just after the annexation of Bohemia and Moravia had been accomplished by military threats, and while the invasion of Poland was being planned, the defendant Krauch prepared another report in which he stated: <sup>2</sup>

In other words, the economic area of greater Germany is

-----

1. Tr. p. 5089

2. Prosecution Exhibit 455



too small to satisfy the military economic requirements as to mineral oils, and the newly and successfully taken up contact with Southeastern Europe shows us the only and hopeful possibility to insure supplies for the mineral oils economy completely for many years by securing this area by means of the Wehrmacht.

The above are nothing more than scattered samples from a wealth of evidence, more fully dealt with in our brief, which not only establishes the extent of Farben's participation in preparing for war, but is also relevant in determining the state of mind of the Farben directors. More direct evidence as to their state of mind is not lacking, as we will see in a few moments.

First, however, it appears necessary to clarify another point on which, we believe, Dr. von Metzler has shot wide of the mark. Much of the evidence on this point he endeavors to brush aside by repeatedly stating that "the prosecution must prove....that each of the defendants<sup>1</sup> was informed about specific aggressive plans of Hitler". He appears to contend that it is not enough that the Farben directors knew that the German military power would be used to launch a program of conquest. To establish their guilt, according to this argument, the prosecution must also show that the defendants knew precisely what nation would be hit over the head first, and the exact time at which this was to occur.

According to this theory, a man who joins with and supports a group of gangsters in an undertaking to rob a series of banks can not be held criminally responsible unless he knew which bank would be robbed first, and precisely what time the robbery was scheduled to occur. Without examining at this time the extent to which the evidence in this case would meet even such a test of criminal responsibility, we would like to emphasize that such a requirement is alien to all generally accepted principles of criminal responsibility and, with particular reference to the concept

---

1. Closing Statement by Dr. von Metzler, Part I, pp. 16, 19

meaningless and futile. The absurd results which would follow have already been pointed out in our answer to the defendants' motion to dismiss Count One of the indictment. We must remind the Tribunal that the Nazi program of conquest was highly flexible and opportunistic. As the  
1  
International Military Tribunal found:

The truth of the situation was well stated by Paul Schmidt, official interpreter of the German Foreign Office, as follows:

The general objectives of the Nazi leadership were apparent from the start, namely the domination of the European Continent, to be achieved first by the incorporation of all German-speaking groups in the Reich, and secondly, by territorial expansion under the slogan "Lebensraum". The execution of these basic objectives, however, seemed to be characterized by improvisation. Each succeeding step was apparently carried out as each new situation arose, but all consistent with the ultimate objectives mentioned above.

Thus, for example, the absorption of Austria was the first item in the German program of conquest, but the actual annexation was not timed in advance; it was precipitated by Schuschnigg's decision to hold a plebiscite on the question of Austrian independence. Hitler himself did not foresee or plan the actual time at which the Anschluss took place. After

---

1. Trial of Major War Criminals, vol. 1, pp. 225-226

the conquest of Austria and Czecho-Slovakia, Hitler, in his own words,<sup>1</sup>  
"Wasn't quite clear whether I should start first in the East and then  
in the West or vice versa.... Under pressure it was decided that the  
East was to be attacked first." Similarly, the invasions of Norway,  
the Balkan countries, and the Soviet Union all developed from what Hit-  
ler and some of the military leaders conceived to be the strategic ne-  
cessities of the developing war. The choice of objectives and the tim-  
ing of these attacks were largely governed by considerations which had  
no immediate relevancy to long term economic preparation for conquest.  
Accordingly, to impose such a requirement as Dr. von Metzler suggests  
is completely unrealistic, and reduces the whole concept of the crime  
against peace to an academic shibboleth.

It is, no doubt, for this reason that Dr. von Metzler shies away  
from the analysis of specific documents or testimony showing the state  
of mind of the defendants, and prefers to examine "in a global manner"  
—whatever that may mean—certain general categories of evidence in-  
troduced by the prosecution. But the question of the defendants'  
state of mind cannot be adequately dealt with in such a cavalier fashion.  
Nor can it be disposed of merely by calling attention to the acquittals  
by the DMT of such men as Speer, Sauckel, Streicher, Fritzsche, and the  
others mentioned by Dr. von Metzler.<sup>2</sup> During the period when these ag-  
gressive wars were being planned and launched, Speer was a government  
architect and functionary in the Labor Front, Fritzsche, a junior offi-  
cial in the Propaganda Ministry, and Sauckel and Streicher were pro-  
vincial political bosses. The participation of these and the other ac-  
quitted DMT defendants in the planning and initiating of the aggressive  
wars, and the extent of their knowledge, may be gathered from the DMT  
record and judgment, but it does not help us to ascertain what the Far-  
ben defendants did or knew. We earnestly suggest to the Tribunal that  
it will be far more profitable to examine the specific evidence in the  
Farben case. On this point, we rely chiefly on our brief, but it may

1. Id., p. 189

2. Closing Statement by Dr. von Metzler, p. 9



be useful at this time, by way of illustration, to look at some of the specific evidence bearing on the state of mind of the defendant Haeffliger, Dr. von Mettler's own client - evidence which is studiously ignored in his closing speech for Haeffliger.

The defendant Haeffliger, as a member of the Farben Vorstand, occupied a position of power and influence in Farben, but he is not what one could call one of the outstanding or dominant figures among the nineteen Vorstand defendants. A little over ten years ago, on March 11, 1938, Haeffliger attended a meeting of the Commercial Committee of Farben, held the day before the Nazi invasion of Austria. A memorandum dictated by Haeffliger five days later is most revealing in showing only <sup>1</sup> part of what Haeffliger knew at that time. He wrote:

Let us call to mind for a moment the atmosphere in which this meeting took place. Already at 0930 the first alarming messages had reached us. Dr. Fischer returned excited from a telephone conversation and reported that the Gasolin had received instructions to supply all stations (Benzinstationen) in Bavaria and in other parts of Southern Germany towards the Czech border. A quarter of an hour later, there came a telephone call from Burg-hausen according to which quite a number of workers had already been called to arms, and the mobilization in Bavaria was in full swing. In the absence of official information, which was made known only in the evening, we were uncertain whether simultaneously with the march into Austria which to us was already an established fact there would not also take place the 'short thrust' into Czechoslovakia with all the international complications which would be kindled by it. The first thing I did was to ask at once for a connection with Paris to cancel my trip to Cannes (Molybdenum negotiations). At the same time, I suggested to Mr. Meyer-Kauster, who was already in Paris and to whom I talked by telephone, to watch developments closely, and to depart too early rather than too late. Furthermore, I requested him to induce Mr. Meyer-Wegelin, who also had already arrived in Paris, to return the same evening. Under these circumstances, of course, the conference on M-Matters took on highly significant features. We realized suddenly that - like a stroke of lightning from a clear sky - a matter which one had treated more or less theoretically could become deadly serious, and furthermore, it became clear to us that the preparations which we had made up to now for the Gruesburg had to be considered rather defective after all. As I had up to now not sworn an oath on the M-matter, I heard only later, after I had sworn such an oath on 12 March in the Reich Economic Ministry, in greater detail about the steps we had taken, which of course I cannot discuss here in detail.

In the months following this meeting of 11 March, Haeffliger, together with the other defendants, was engaged in consolidating the German position in Austria and in preparing not only for the execution of the short thrust into Czechoslovakia, but also to reap the spoils of that short thrust. At the end of March 1938, and during the first week of April 1938, Haeffliger was in Vienna negotiating with various German authorities and representatives concerning Farben's control of the chemical industry in Austria. At that time, Haeffliger took advantage of the opportunity, pursuant to a cue from Hitler's economic advisor, Keppler, to sound him out on the attitude of the German authorities as to Farben influences on enterprises in the Sudetenland of Czechoslovakia. Immediately thereafter, on April 9, 1938, Haeffliger and Ilgner's deputy, Krueger, submitted to Keppler the "New Order for the Greater Austrian Chemical Industry". On 19 April 1938, Haeffliger, together with the defendants Kuehne and Ilgner, attended a special Farben meeting on Austria, at which detailed discussions were held concerning taking over the Austrian chemical industry. The Commercial Committee meeting of 22 April, attended by Haeffliger, discussed the necessary steps to take over the Austrian chemical industry and Farben's relations with Aussig in connection with its interests in Czechoslovakia. It was agreed that the Sudeten German press would be called upon for greater measures of publicity.

Following this meeting held in April 1938, where Farben's interests in Aussig were discussed, a special Farben meeting on Czechoslovakia was held on 17 May 1938, the results of which were reported to the meeting of the Commercial Committee on 24 May 1938, attended by Haeffliger. At the May 1938 meeting, Farben's Commercial Committee with Haeffliger present, discussed the "employment of Sudeten Germans for the purpose of training them with the I.G. in order to build up reserves to be employed later in Czechoslovakia."

After Germany took over the Sudetenland, Haeffliger played an especially active role in connection with taking over the two important

plants located in the Sudetenland, which were owned by Czechoslovakia's largest chemical concern, the Prager-Verein. In November 1938, Haefliger and other representatives of Farben and von Heyden (the two concerns which took over the plants in the Sudetenland) decided that the objective of the Czechoslovakian firm Prager-Verein to reestablish an independent production of nitrogen of lime in the remaining part of Czechoslovakia was to be opposed by appropriate steps through<sup>1</sup> the Economic Group Chemical Industry.

In June 1939 the question whether Haefliger should retain his Swiss citizenship became a Farben problem. The defendant von der Heyde was asked to take up this question with the competent Reich authorities. A secret letter was written by von der Heyde and Krueger, on 11 August, to Lt. Colonel Huenermann of the Military Economy Staff of the German High Command. This letter reveals that the question of Haefliger's citizenship had been discussed by the Farben Vorstand in view of the approaching war, and that the Vorstand had decided that particularly in the event of war Haefliger would be in a better position to serve Germany as a Swiss citizen. After pointing out that Haefliger had completely identified himself as a loyal German, that he had served Germany in the First World War as head of the War Acids Commission, and<sup>2</sup> that he wanted to become a German citizen, von der Heyde states:

However, against this personal intention (of Haefliger), the Vorstand of our firm asked him in view of the export interests of the Reich and our concern, and especially in view of possible war complications, to abstain from acquiring German citizenship. In regard to the question whether Director Haefliger should acquire German citizenship or remain of Swiss nationality as hitherto, the consideration that Mr. Haefliger with exclusively Swiss citizenship would be in a position, as an expert in the chemical field, to render Germany very good services, is, in our opinion, of great importance. Thus, the possibility is given on the one hand, to have an expert who is loyal to Germany, unobtrusively negotiate abroad questions regarding war.

If we look at merely this part of the record with respect to the

1. Prosecution Exhibit 1906  
2. Prosecution Exhibit 2015



activities and knowledge of Haeffliger, we see that to him the invasion of Austria was an established fact some time before it began, and that he had known for a long time that the little country of Czechoslovakia was slated to be taken over when the time was ripe. Not only did he know of the plans to take over Czechoslovakia, by force, but he made

advanced preparations so that Farben would have its plans and even its reserved ready at the appointed hour. What is it that the defendant Haeffliger did not know, which is essential for a guilty state of mind with respect to invasions and aggressive wars? Is it the defense contention that, although Haeffliger knew that Czechoslovakia was to be taken over, he was uncertain just when this would occur, and that therefore he did not have sufficient knowledge of the aims of Hitler? It is true that at the meeting of March 11 he states that those present were uncertain whether simultaneously with the march into Austria, which to them was already an established fact, there would not also take place the short thrust into Czechoslovakia. Is it the defense contention that it is not enough that the defendant Haeffliger knew that Hitler planned to take over Czechoslovakia, but that he must also have known the exact day on which Hitler planned to do this? If this is the defense contention, it seems to the prosecution that it is quite untenable. Even Hitler and the military leaders, as we have already pointed out, constantly improvised and changed their plans to meet changing circumstances.

The military men, the diplomats and the businessmen all had their roles to perform. It is natural that the military men were more concerned with military strategy and time tables. It is also natural that the so-called businessmen or industrialists were not concerned with the time tables and precise military strategy. It is no more important that Haeffliger may not have known the exact day when the short thrust into Czechoslovakia was to come about, then it is that Ribbentrop may not have known the extent to which the synthetic gasoline program would feed the German war machine, or that magnesium metal was available in sufficient quantities for gun carriage wheels.

If it be true then that knowledge of the exact day when a country is to be taken over is unimportant, what else does the defense contend the defendant Haeffliger should have known in order to be held guilty under the standards applied by the International Military Tribunal?

Perhaps the defense will contend that since no shot was fired in taking over Czechoslovakia, and since the defendant Haeffliger did not know whether or not a shot would have to be fired, that therefore the defendant Haeffliger did not have the required state of mind. That the IMT did not require knowledge that a shot would have to be fired is clear. In the first place, even Hitler did not have this kind of foresight. Furthermore, the IMT judgment itself specifically ruled on this question. For example, in discussing the defense of the defendant Raeder, the IMT says as follows:

The defendant Raeder testified that neither he nor von Fritsch nor von Blomberg believed that Hitler actually meant war, a conviction which the defendant Raeder claims that he held up to 22 August 1939. The basis of this conviction was his hope that Hitler would obtain a 'political solution' of Germany's problems. But all that Germany's position would be so good, and Germany's armed might so overwhelming that the territory desired could be obtained without fighting for it.

There is one other contention which has been raised by some of the defendants in this case which we would like to comment upon briefly. It has been argued that the defendants participated in the rearmament of Germany in the belief that it was for a defensive war, and they did not believe they were participating in preparations for an aggressive war. No substantial evidence has been introduced by the defense to support the contention that any of these defendants really believed that Germany was threatened with invasion from any other country. In fact all the evidence is to the contrary. Although the defendant Krauch said that Goering and Hitler had stressed the danger from the East in their speeches in December 1936,<sup>1</sup> at the same time, the defendant Krauch testified that the West Wall had been constructed for defensive purposes.<sup>2</sup> When asked to explain why the West Wall was created for "defensive purposes", and why no comparable wall was erected in the East, the defendant Krauch spoke of the possibility of a two-front war.<sup>3</sup> Krauch thus revealed what he and the other defendants had in mind when

1. Tr. p. 5137
2. Tr. p. 5114
3. Tr. p. 5446-47



they spoke in their testimony of a "defensive war." Apparently, the defendants take the position that if other countries came to the aid of nations attacked by Germany, then the ensuing war was a "defensive war" on the part of Germany. In the eyes of these defendants, any action which Germany took to ward off these "international complications" resulting from German aggression could be justified as a measure of self-defense. This is precisely what these defendants have indicated again and again is at the heart of their concept of what constitutes a "defensive" war as distinguished from an "aggressive" war.

In our preceding factual discussion we selected the defendant Haefliger as an example. Compelling as the evidence as to his knowledge that the Wehrmacht would be used for conquest appears to be, it is in no way exceptional as among the defendants. Surely as to a number of them — Krauch, Schmitz, von Schnitzler, ter Meer, and Ambros among others — an even larger body of evidence as to state of mind is available, as we have shown in our brief.

We will have some further observations in conclusion on several of the more abstract legal questions which have been raised concerning Counts One and Five. We will proceed at this time to a brief survey of the Ferben record under the other counts of the indictment.

Mr. Newman will take over.

B. Count Two

MR. NEWMAN:

In a general way, we may distinguish the crimes charged under Counts One, Two and Three as directed against peace, against property, and against persons, respectively. To some extent these crimes overlap, and what we have charged under Counts Two and Three are part of the facts constituting the crime charged under Count One. However, the acts charged under Count Two were committed primarily against property. Where there is property, there must be an owner. What spoliation involved for some individual owners we have shown in one outstanding case, by producing the testimony of Dr. Szpilfogel. But property is also the

wherewithal by which a community sustains the life of its citizens, and our main purpose in showing the acts of spoliation committed by these defendants has been to emphasize the exploitation of the economies of the conquered countries and the plunder of their industries, rather than the harm done to the individual owners. Exploitation as carried through by these defendants took on every appearance, from open looting, as in the cases of dismantling the Wola, Debica and Blyzin plants in Poland or the Sluiskil plant in Holland, to the "most cunningly camouflaged financial penetration",<sup>1</sup> as in the case of the French majority participation in Norsk Hydro.

Ever since wars have raged among peoples, the occupier has been tempted to plunder the country of the occupied. That is why, in order to maintain civilization, the Law of Nations, long before the Hague Conventions, laid down some basic rules restricting the occupant. The Hague Conventions of 1907 codified these rules in the Articles annexed to the Convention, more particularly in Articles 42 to 56. We do not propose to repeat the many aspects under which the activities of these defendants amounted to criminal spoliation. In view of the defenses stressed by them in their final statements, we shall emphasize only two of the basic principles expressed in the Hague Convention. One principle is that belligerent occupation which, according to its very nature, is something transitory and impermanent, should not be used to create a lasting and permanent change, for instance in the conditions of ownership. Another basic principle is that the occupied country should not be compelled to support the war effort of its enemy and thus cooperate in bringing about its own final defeat.

How completely the temporary character of belligerent occupation was ignored by these defendants appears from each individual case of planned and accomplished spoliation through Europe. In the cases of the Polish Wola and Winnica plants, the defendants von Schnitzler, ter Meer,

1. Words used in the "Inter-Allied Declaration against Acts of dispossession in Territory under Enemy Occupation or Control" of 5 January 1943 (PE 1057)

and others asked for, and received, a license to dismantle the plants and remove equipment to Farben plants in Germany. Buerger and Wurster made far-reaching suggestions for dismantling other Polish chemical factories. The equipment of the Polish Debica factory was brought to Farben's Leverkusen plant. In Soviet Russia, Farben, mainly represented by defendants ter Meer and Ambros, drafted "trustee" agreements for the Russian buna plants for a three years' period. Long-term contracts, intended to remain in force after the expiration of the trusteeship agreements, and pre-emptive rights for Farben covering the entire plants, were also suggested. The Continental Oil Company, of which Krauch and Buetefisch were directors, planned the wholesale plunder of Russian oil, including the oil deposits, the plants, and their equipment. In correspondence between defendant Haefliger and another Farben employee, the Russian light metal plants were discussed, and, "as amongst ourselves", it was stated that stripping would be preferred to trusteeship. In Alsace-Lorraine, Farben, under the leadership of Jaehne and Wurster, partly leased certain oxygen plants for a four years' period, and partly acquired outright title. Krauch was engaged in dismantling the equipment of the Simon Pit in Lorraine and shipping the equipment to Germany. The owners of the principle dye-stuff factories in France were dispossessed in favor of a corporation newly organized, styled Francolor, in which Farben, mainly represented by von Schnitzler, ter Meer, and Kugler, acquired a 51% interest. The Continental Oil Company, to the knowledge of its board members Krauch and Buetefisch, dismantled French plant equipment to the extent of 12 million Reichmarks, and shipped it to other countries. In the field of French photographic products, Farben had already stated, in its New Order program, that it would be desirable to prevent further development of the French industry with respect to products which could be supplied by German production facilities. Defendant Gajewski saw to it that this program was carried through. In Holland, the most important nitrogen plant (Sluiskil) was dismantled, and part of the equipment shipped to Farben



plants outside of Holland. In Norway, the German Reich planned a light metal development for the German Air Force which now, after it went wrong, these defendants call "exaggerated", "crazy", and "unsound". At the time, however, defendant Krauch recommended Farben's large scale participation since the project might become the key factor in Farben's control of the Norwegian hydro electric power works. In all these cases, in Poland, Soviet Russia, France, Holland, and Norway, the defendants aimed at permanent domination, at permanent dispossession of the rightful owners, and at permanent and controlling participation in the key industries involved. They utterly ignored the fact that belligerent occupation is temporary in character, and that the rules of warfare forbid the exploitation of the economy of the occupied territory on a permanent basis for the war needs of the occupying power.

Even now, after the results of these policies and practices are manifest throughout Europe, Dr. Wahl in his "Brief on Fundamental Questions of Law" tells us that:

There are three possibilities:  
either the occupying power which has commandeered the factory wins the war, or it loses it, or the result is a deadlock. If it wins the war, it concludes the peace treaty on the basis of a capitulation and then, legalizes its economic measures through the conclusion of the peace ..... or else it loses the war and the factory naturally returns to the possession of the occupied foreign country.

In other words, the Hague Conventions are meaningless and may be fully disregarded. If the occupying power wins the war, nobody cares, since the peace treaty of the victorious power "legalizes its economic measures". If, however, the war is lost, nobody cares either, since, then, "the factory naturally returns to the possession of the occupied foreign country". This is, of course, a plain invitation to the Tribunal to nullify outright the laws of war as embodied in the Hague Conventions. The invitation is put forward with sublime disregard for the terrible injury which such activities may have wreaked on the internal economy of the occupied areas during the belligerent occupation, and that the plundered properties may have been damaged, stripped, or removed thousands of miles and cannot "naturally return to the possession of the occupied country" without divine intervention. Is not this invitation quite in line with

the views expressed by Farben's lawyer Mayer-Wegelin reviewing Farben's attitude at the time in question? Speaking of the acquisition by Farben of oxygen plants in Alsace-Lorraine, he wrote:

We put aside our doubts as to whether such acquisition was justified since ... they were outweighed by the interest of I.G. Farben ... in excluding outsiders. In other words: in order to maintain our oxygen position, we reached the result that we should assume the risk of having to return the property.

Another of the laws of war, as expressed in the Hague Conventions, is that occupied countries and their populations should not be obliged to take part in operations against their own country. This prescribed purpose of using, for the military needs of the conqueror, the economy of occupied countries, their plants, equipment, and labor, is everywhere manifest in the activities of the defendants. During the first days of the war, when suggesting Farben as "trustee" for the Polish chemical plants, von Schnitzler pointed to the value those plants would have for the German war effort.

The Reich Ministry of Economics, when finally complying with von Schnitzler's request, appointed the Farben directors Schwab and Schoener as "trustees" of the Polish enterprises for the distinct purpose that the Polish plants should "be adapted to the requirements of the German war economy". Ambros, when sending defendant Brauch a list of Farben experts for use in occupied Soviet Russia, trusted "that with these preparations made, the assurance is given



that the Russian buna industry can be placed into our service quickly".

Defendant Ilgner, in his circular letter to the Farben Vorstand accompanying Farben's New Order program for Norway, pointed to "the resulting concentration on German requirements" which "gives the signal for a definite alteration in the structure of the Norwegian economy and Norwegian foreign trade." After the dyestuff factories in France had fallen to Farben, the joint plant of the Wehrmacht and Farben provided that "the entire personnel of the Francolor plants which amounts to 3500 employees and workers, will be engaged in manufacturing for Germany".

The general defense theory with respect to the facts which we have charged under Count Two has been developed by Dr. Siemers in his closing statement on behalf of the defendant von Schnitzler and by Dr. Berndt on behalf of defendant ter Meer. We do not intend to deal here with such statements as that the defense has "proved the faultless economic form of the agreements" with the French firms or such general contentions as that this affair reflects "continuous negotiations on a purely economic basis". It seems to us that much of this talk is "window dressing" and really not presented for serious consideration. There comes a time in analyzing occurrences under the Third Reich when serious-minded people must not lend dignity to repeated fabrications which divert us from the basic issues.

By reference to a very few documents, we may pierce the "wishful thinking" which, in our view, characterizes the very cavalier treatment which the defense has given to the evidence on this subject, and particularly to the contemporaneous documents. When the defendant Baergin wrote to the defendant Wurster in November 1939, shortly after both of

them had made their investigations of the chemical industrial situation in Poland on the heels of the Nazi invasion, Buergin well know what was afoot. Buergin states that "for Germany the following will be of interest for different uses". This document is merely a complement to the Wurster report on his Polish trip, which shows even more dramatically his state of mind with respect to what Germany was after in Poland. On the 8th of November 1939, Buergin and Wurster made reports on "their general impressions, as well as, particularly, on the technical conditions and the economic situation of the plants inspected". During the same meeting Bueteftach, Oster and Jaehne also reported on other fields of interest within Poland, namely nitrogen plants, oil fields, and oxygen works. Von Schnitzler described some of the specific plans already well under way with respect to the role Farben intended to play in occupied Poland. Can it be seriously suggested that these defendants did not want to take advantage of Germany's aggression in Poland in order to expand their interests? And can it be any more seriously contended that the entire Vorstand did not know what was afoot after these reports by numerous Vorstand members? Can it be seriously asserted that if Farben's acts in Poland were criminal, the entire membership of the Vorstand does not bear a full share of guilt, regardless of how the specific planning and execution of the program was distributed among them?

What about the other statements made by Dr. Siemora with respect to spoliation in Poland? The case of Wola, in his eyes, is "uninteresting with respect to international law for the simple reason that I.G. Farben neither bought the Wola nor acquired any other rights to it....The fact that Commissioners were appointed as trustees by the German

civilian administration is a matter for the government office but not for I.G. Farben". Such is his statement in the face of the contemporaneous documents showing that von Schnitzler had to overcome the resistance of the Reich Ministry of Economics before he could persuade the Ministry that Farben employees should be appointed Commissioners of the Polish chemical enterprises, including Wola. And such is his statement in the face of von Schnitzler's letter to the Ministry of Economics of 29 November 1939 where he "takes the liberty" to make certain suggestions, among them that a buffer company be organized by Farben which "would furthermore be entitled to remove from the Wola plant, which has also to be closed down, all installations still fit for use, in particular the brand-new betaoxynaphtol plant".

Speaking of the Polish Boruta plant, Dr. Siemars states that the Main Trustee Office East "on its own initiative made the suggestion of selling (the Polish Boruta plant) to I. G. Farben". Ter Meer's counsel Dr. Berndt even more adventurously states that "I. G. wanted to lease the factory, a thing which would not have represented a change in the ownership. .... The Trustee Office rejected this and proposed to the I. G. a purchase of the Boruta. .... There was nothing left to do than to consent to the purchase suggested by the government office". Can it really be unknown to counsel at this stage of the trial that, long before there was any connection with the Main Trustee Office East, namely on 10 November 1939, von Schnitzler had already suggested to the Reich Ministry of Economics that "it may be in the interest of the Reich to reprivatize the plant again .... It should therefore not seem unreasonable that, in such an eventuality, I. G. Farben should be given priority rights with respect to the purchase of the plant"? This is



fully in line with Kugler's statement that, as early as in the middle of September 1939, Farben "already certainly entertained the idea of acquiring one or the other of the (Polish)plants". But Dr. Berndt now tells the court that the evidence has shown "without any doubt that the I. G. did not, from the beginning plan measures in order to incorporate or annex these factories to its concern.

In the case of France as in the case of Poland, the entire Farben Vorstand participated in, or was fully advised of, the spoliation being pursued there. Von Schnitzler and the deceased Vorstand member Waibel sent all members of the Vorstand a copy of the file memo of the first meeting of the French and German representatives at the Wiesbaden conference. Ter Meer and Kugler now state that they were shocked by Envoy Hemmen's performance. But, at the end of the day when this meeting took place, von Schnitzler wrote to Schmitz to inform him that "thanks to the very methodical and energetic charismanship of Herr Minister Hemmen we were able to go into medias res at once, and shall now hear tomorrow morning what the French dye industrialists .... think of our 'claim to leadership'". This thorough going understanding of the strategy of pressure was likewise shown when Farben had succeeded in getting its basic demands from the French. Von Schnitzler wrote to Hemmen: "This would never have been accomplished had not the Reich agencies in both Wiesbaden and Paris helped and advised us in so outstanding a way". Certainly the French were not misled by any outward friendliness which the Farben representatives now claim characterized the negotiations. The French minutes of the second meeting reflect a heated exchange between Duchemin and von Schnitzler in which Duchemin makes it plain that Farben's proposals amounted to a "dictate". And the French insistence on a preamble on the Francolor Agreement showing the circumstances of pressure also revealed their feelings. Even Farben's French lawyers were concerned about the matter.

With respect to the oxygen plants in Alsace-Lorraine which Farben "purchased" from the Reich, Dr. Siemens states that "the French property had already been confiscated for a longer period, and taken over by the German Reich with property rights", and that, if this act violated the Hague Conventions, "I.G. Farben did not participate in this violation of international law or in this criminal act, especially since it had no connection of any nature whatsoever with custodians". This is wrong as a matter of

law and incorrect as a matter of fact. From a legal aspect, we can confine ourselves to quoting from the judgment of Tribunal II in Case No. 4, the Pohl case:

Any participation of (the defendant) was post facto participation, and was confined entirely to the distribution of the property previously seized by others. Unquestionably that makes him a participant in the criminal conversion of the chattels.

But apart from the irrelevancy of the defense from the legal point of view, the facts are otherwise. It has been shown that the confiscation of the oxygen plant at Schiltigheim, Alsace, perpetrated by the Nazi government, and the acquisition of the confiscated plant by Farben, were virtually one and the same act. The order by which the Nazi government confiscated the plant preceded the acquisition of the plant by Farben from the Reich by a few days, and was made part of the purchase contract between the German Reich and Farben.

The deliberate purposefulness with which the defendants carried on throughout the occupational period is scarcely in line with their present protestations of innocence and ignorance. When Farben wanted something, it could always contact the proper Nazi power. This is true whether we have Hurster contacting the notorious Gauleiter Buerckel "about the Lorraine oxygen plants", or Kaeffliger sounding out Hitler's confident, Keppler, with respect to Farben's chance of acquiring Austrian and Czech enterprises, or Mann and Kugler making their round-trip to Michol and Kolb and Neef and Bard in order to get their support for starving the French industry into submission, or von Schnitzler writing to SS General Greifelt and Max Winkler about Farben's plans to adjust its operations in Poland in line with Nazi racial and expansionist policies. It would be most improbable that the government officials could have concealed, even if they had wanted to, the barbaric nature of German occupation policies from experts such as these defendants, who were continually contacting them, and who received the most revealing reports on the policies of oc-



cupational exploitation and their results. In connection with the Continental Oil Company, of which he was a board member, Buotofisch received a report concerning the Polish petroleum industry. Speaking of the manpower supply, this report stated:

If the present situation is allowed to continue, the state of exhaustion and the rapidly increasing number of deaths will make it almost impossible to maintain production.... the chief difficulty for the plant lies in the feeding of the personnel.... a really catastrophic degree of mortality has been reached. If only for reasons concerning the efficiency of the mineral oil industry, it is essential for rations to be increased.

The ruthlessness with which the economy of the occupied countries was adjusted to the German war potential could not be expressed more bluntly. Even when we get to those defendants whose special responsibilities for the Verstand were more restricted in their nature, the evidence is clear enough. Let us take for example the defendant Oster whose special field was the sale of nitrogen. In January 1942, he received de Hass's report on Germany's overall plans for plundering Soviet Russia by stripping her cities, and shipping the usable equipment to Germany. In July 1942, he told the defendant von Schnitzler that he would have to be excused from an important meeting of Farben leaders because he had to confer daily with the competent authorities concerning the distribution of approximately 60,000 tons of nitrogen which was to be brought to Germany from Western Europe.

The basic idea underlying German occupational policy throughout Europe was German superiority. To both the government authorities and Farben it seemed natural that the "supermen" were to dominate, and that other people must expect to bow. When, after the collapse of Franco, Mann and Kugler made their round-trip to the German military authorities in order to "negotiate for the planning of peace," a Farben report on these discussions was circularized which quotes the "noteworthy" and "Unequivocal" statement of the German Ministerial dirigent Michel that the "historic chance of adjusting French economy to German requirements through appro-

appropriate interference in the French economic system must be utilized completely and to the full". This principle was fundamental. Farben's own suggestions in its numerous "New Order" reports for European countries were governed by the same basic idea. That the economies of the victimized countries were to be subordinated to the interests of Germany on a permanent basis, was a matter of course, and not even worthy of discussion. From the report of the Farben employee de Hass it appeared that Soviet Russia was to be plundered "ruthlessly". Mann saw to it that the report was transmitted to each member of the Farben Vorstand and the Commercial Committee. With this overall purpose in mind, Ambros could report thereafter, concerning Russian buna, that the contract between Farben and the German Reich needed only to be signed, except for the question whether "the processes and experience found in Russia" should be utilized within the Greater German Reich exclusively through Farben and at what evaluation, or whether the German Reich should be allowed to participate. As Ambros believed, Farben in view of their achievements in Buna, could demand "exclusivity."

How could it be otherwise? The defendant Ter Meer was asked by his counsel whether he thought that the Francolor agreement would have been completed even if government agencies had not intervened in any way. Ter Meer answered in the affirmative, stating that the Francolor contract was by no means unusual. As an example he referred to Italian dyestuff plants which Farben owned together with the Italian firm Montecatini. The Italian government itself as Ter Meer boasted, had instructed the Italian enterprises to this effect: "We will permit you to take over this firm only if you get together with the people in the world who understand something about the dyestuffs business, and that is the Germans." It was this spirit, which even now prevails among the defendants which made it so natural for them to cooperate wholeheartedly with the Third Reich Government and to take the initiative and display the most vigorous activity in economic pillage throughout Europe.

If your Honors please, Mr. von Street will continue.

MR. VAN STREET: If your Honors please, would you prefer the recess now?

THE PRESIDENT: We will take our recess at this time, Mr. van Street but I might say for your information and co-counsel's that we do have to adhere rather strictly to our set recess time on account of the sound track.

Very well; the Tribunal will rise for fifteen minutes.

(A recess was taken.)



THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: You may proceed, Mr. Van Street.

MR. VON STREET: Count Three:

We come now to that part of the case where the lawlessness bred by these aggressive wars reached its pinnacle. Having embarked upon a program of criminal aggression, which plunged the world into war, the aggressors not only ravished the economic resources of the countries they criminally invaded, but also set about to exploit and use as tools of this aggressive war effort the human beings living in those countries. What this overall program of tearing 5,000,000 foreign laborers away from their homes and their families, deporting them to Germany, and forcing them to work as slaves for the German war machine, meant not only from humanitarian point of view, but also for the cold-blooded purpose of sapping the strength of all European countries, has been proved and judicially determined again and again. This program, perhaps more than any other embarked on by the German aggressor, did more to prostrate Europe than any other facet of World War II. In addition to making slaves of the civilian populations of occupied Europe, the aggressor used prisoners of war in its armament industry and industries directly related to the war effort. And finally, to top it all, is I.O. Auschwitz.

The participation of these defendants in these criminal activities is so well established that there seems no need for extended comment here. The overall defense to all of this has been what is variously termed necessity, duress, and compulsion. Aside from the legal aspect of such defense, which has been adequately covered in our briefs and in the judgment of the DMT and other Tribunals, we would like merely to cite a few examples showing why there is no factual basis whatsoever for any such defense. The evidence has shown that in every field - foreign laborers, prisoners of war (in the armament industry), or concentration camp inmates - Farben took the initiative in obtaining such persons for use as slaves in Farben factories.

Let us keep in mind this defense of duress as we read from a . . .

memorandum of Farben's Bitterfeld plant, written by the defendant Buergin in July 1943, and relating to the "allocation of labor":

We have just determined on the basis of a telephone conversation with Herrn Kaufmann that the prospects for the allocation of more labor look very bad. As a result of the July drive it will probably not be possible to allocate more than 100 men to the dyestuffs factory and the Bitterfeld plants via the 'red slip method'. Of these approximately 2/3 would go to Bitterfeld. It is said that for July the Gebechem (Plenipotentiary General for Special Questions of Chemical Production) received only a total allocation to the extent of the requirements of the dyestuffs factory and the Bitterfeld plants. Therefore it will not be possible to get more than mentioned above out of the July drive.

Regarding the August drive, nothing is known yet at present. If, however, in view of high priority manufactures such as tanks, Navy and Air Force, the Gebechem is to get as little in August as in July, then we can only count on a quota which bears relation to our urgent requirements.

Negotiations about covering the requirements of the M. - plant have been carried on in the Air Ministry by Dr. Perschmann. Herr Kauffmann is unable to say whether this has also been done in respect to the requirements for our E. - metal department.

We suggest that the departments heads determine what amounts we will not be able to produce if we get only quite insufficient allocations of labor, in order to be able to give the Gebechem reasons for the urgency of the allocations.

In view of the fact that during the next months there will not be relief with regard to labor allocation, it is recommended that it be pointed out again in the next plant meeting that restraint should be used in authorizing leave.

On this memorandum, the defendant Buergin wrote on the margin "French personnel going on leave to furnish guarantors: Private agreement with slave traders?" In this testimony, Buergin explained that by "slave traders" he meant to refer to the French and Belgian firms who supplied the workers. His counsel then asked him whether the expression "slave traders" was used in a "more or less jocular form", and Buergin replied:

To what extent that was actually customary, I cannot tell you today. At any rate if it is my job, as I know it was the... firm's job to get people and to send them to work, and if the people maintain that they did not come quite voluntarily, then in my way of expression, a joke like that could perhaps be understood.

We forbear to elaborate on the suggestion that the people who "did not come quite voluntarily" might have had some difficulty in understanding the expression "slave traders" as a "joke".

Let us again keep in mind the defense of duress with respect to the illegal employment of prisoners of war as we read the following letter written in October 1941, from Kirchner of Krauch's office to General Thomas, Chief of the Office of Military Economy and Armament in the High Command of the Wehrmacht.

"During my visit, Professor Krauch developed an idea concerning the employment of Russia POW's in the armament industry, for the further development and, especially, the execution of which he considers you, dear General, to be the right man."

With further bearing on the defense of duress and compulsion in the use of concentration camp laborers, we point out that, amidst the wealth of evidence showing initiative, there is also in evidence a document establishing how the Goering order, which has been relied upon so much in this trial as forcing Farben to employ concentration camp inmates, actually came about. On 25 February 1941, Krauch wrote to Ambros concerning "Buna Plant Auschwitz", as follows:

.... At my request, the Reichsmarschal issued special decrees a few days ago to the Supreme Reich authorities concerned, in which he again particularly emphasized the urgency of the project, and is constantly devoting his particular attention to the progress of those tasks of military economic production which have been entrusted to your care. In these decrees, the Reichsmarschal obligated the offices concerned to meet your requirement in skilled workers and laborers at once, even at the expense of other important building projects or plans which are essential to the war economy.

Three years later, in January 1944, we find Krauch writing to Kehrl, the head of the raw materials office of Speer's Ministry, as follows:

May I be allowed to point out, however, that the efforts of my office in such matters as the procurement of foreign labor within the restrictions set on the initiative of the individual employed by the Plenipotentiary General for the Provision of Manpower, and the employment of certain classes of manpower (prisoners of war, inmates of concentration camps, prisoners, units of the Military Pioneer Corps, etc.), have had an effect upon the speed of progress of chemical production, and upon that production itself, which must not be underestimated. I consider that the initiative displayed by my staff in the procurement of labor, a virtue which has proved its



worth in the past, must not be repressed in the future. It is, of course, clear that when Krauch, Farben's principal representative in the Reich government, spoke of his initiative in procuring slaves as having had an effect upon the speed of chemical production, he was really saying that he had done a good job for Farben as well as for the German war effort.

We will not discuss in detail here the evidence relating to the mistreatment of foreign workers, prisoners of war and concentration camp inmates, in individual Farben plants, except for a few brief remarks with respect to I.G. Auschwitz. The evidence concerning mistreatment in other Farben plants is developed at some length in our briefs. Before discussing I.G. Auschwitz, a few comments are in order with respect to Farben's role in supplying the poison gas used to exterminate concentration camp inmates, and in supplying Farben products to be tested in criminal medical experiments.

Mr. Minskoff will continue.

MR. MINCKOFF: In our brief, we have analysed the evidence establishing the role which Farben played in supplying Cyclon-B gas to the SS for use in the extermination of enslaved persons in concentration camps throughout Europe. We believe that the evidence establishes the following facts beyond a reasonable doubt:

(a) Several millions of human beings were exterminated in concentration camps by means of gassing with Cyclon B gas;

(b) The defendants participated in these crimes, through Farben and its subsidiary Degesch, by virtue of their activities in connection with manufacturing the Cyclon B gas and supplying it to the SS;

(c). The defendants knew that human beings in concentration camps were being exterminated by gassings; and

(d) The defendants either knew that the Cyclon B gas which Degesch manufactured and supplied was being used to carry out this program of mass extermination, or they "deliberately closed their eyes to what was being done".

In our brief we have also analyzed the evidence establishing that the defendants Hoerlein, Lautenschlaeger and Mann are responsible for criminal medical experiments upon human beings, without the subject's consent. In our judgment, the evidence has established beyond a reasonable doubt that concentration camp inmates were subjected, without their consent, to criminal medical experimentation resulting in bodily harm and death; that these experiments were conducted for the purpose of testing the efficacy of Farben products; and the defendants Hoerlein, Lautenschlaeger and Mann took the initiative in suggesting that Farben products be so tested.

The Farben record at Auschwitz has been clearly revealed during the course of this trial. We reiterate that the whole attitude of Farben at Auschwitz can best be described by a remark of Himmler: "What does it matter to us? Look away if it makes you sick." A letter written in July 1942 by a Farben employee at I.G. Auschwitz to a Farben director at Frankfurt indicates the type of thinking which permitted an I.G. Auschwitz in our civilized world:

You can imagine that the population is not going to behave in a friendly or even correct manner towards the Reich Germans, especially towards us I.G. people. The only thing that keeps these filthy people from becoming rebellious is the fact that armed power (the concentration camp) is in the background. The evil glances which are occasionally cast at us are not punishable. Apart from these facts, however, we are quite happy here.....

With a staff of such a size, you can well imagine that the number of accommodation barracks is constantly increasing and that a large city of shacks has developed. In addition to that, there is the circumstance that some 1,000 foreign workers see to it that our food supply does not deteriorate. Thus we find Italians, Frenchmen, Croats, Belgians, Poles, and, as the "closest collaborators" the so-called criminal prisoners of all shades. That the Jewish race is playing a special part here, you can well imagine. The diet and treatment of this sort of people is in accordance with our aim. Evidently, an increase in weight is hardly ever recorded for them.

That bullets start whizzing at the slightest attempt of a 'change of air' is also certain as well as the fact that many have already disappeared as a result of 'sunstroke'.

The evidence has shown the "special part" played by the Jewish race at I.G. Auschwitz. We have seen how human beings were used as machine tools, and their treatment determined solely by their efficiency in Farben war production. And since the Auschwitz main camp, which Farben incidentally helped to construct and enlarge in various ways established by the evidence, was able continuously to supply Farben with a fresh flow of these human machine tools, Farben did not have to worry too much about keeping the supply it had in good shape -- not even from the standpoint of efficiency in production.

The evidence has also shown, again and again, that the diet and treatment "of this sort of people" was indeed in accordance with Farben's aims. Farben gave them enough food to keep them alive and moving until new replacements came along. "Evidently an increase in weight was hardly ever recorded for them" If beating them meant more work for the moment -- then they were beaten; if threatening them with being sent to the gas chambers meant they might work a little harder for the time being -- they were threatened; if occasionally dangling a little extra scrap of food before their mouths meant a little more work -- Farben was willing occasionally to part with this scrap of food. This Tribunal has heard a defense witness describe the mob scene which followed his throwing an apple core out of a window where inmates were working. If occasionally offering a bonus when fresh supplies from the Main Camp were delayed in coming might mean a little more production, Farben would resort to offering a few marks as a bonus.

And finally we have seen how the bullets started whizzing at the slightest effort at a "change of air" and that thousands upon thousands disappeared as a result of a "sunstroke". For, when these human machine tools broke down completely on the spot, they were disposed of then and there. We have seen that Farben even erected a special mortuary to accommodate forty of them at any one time. When these human tools did



not break down completely, but became so worn out that they were useless to Farben, they were sent back to the main camp at Auschwitz as scrap — to be disposed of with the rest of the human scrap in the gas chambers at Birkenau. Farben even supplied the gas which was used for this purpose. And the Methanol necessary to burn the bodies came from Farben. And finally we have seen how Farben took its share of the meager clothing which had been used to protect these discarded tools.

The above facts have been proven beyond any shadow of doubt by the evidence introduced in the case. The only defense possible to all of this is that the particular defendants were not responsible for those conditions. More particularly, it is emphasized that they did not know what was going on.

More human beings were put to death at Auschwitz than were killed in World War I — more than were killed in World War II, excluding the casualties on the Eastern Front. Literally millions of people were put to death in the very backyard of one of Farben's pet projects — a project in which Farben invested 600 million Reichsmarks of its own money. Is it conceivable that while the whole outside world was denouncing, as one of the greatest of all crimes, the murder of these people outside the very gates of I.G. Auschwitz, that the Farben officials did not know what was happening to the human machine tools upon which their very project depended for operation?

Even if we should forget for a moment that Farben had an investment in Auschwitz, is it possible that these defendants, with their sources of intelligence, did not know what was happening? The defendant Mann testified that Farben had more than 1,000 agents in 75 countries of the world, and he and many other defendants travelled abroad many times during the war. Some of them have admitted that they heard "rumors." Von Schnitzler spoke of hearing that Farben gas was being used to kill people at Auschwitz, and said he was horrified, but that he reached only by asking "Do other people know about it too?"

But when in addition to this world-wide knowledge of the blackest

chapter in the history of mankind, we take account that Farben itself was at Auschwitz cooperating closely with the main camp, what do these defendants expect us to believe they thought was happening? Witness after witness, including defense witnesses, have testified that gassings were common knowledge at I. G. Auschwitz. From the beginning, I.G. Auschwitz helped the main camp to enlarge its facilities by using Farben's ability to get material; and also by using Krauch's position in the government. A number of defendants visited I.G. Auschwitz, including the main camp. In addition to supplying the poison gas and the Methanol, Farben paid 100,000 Reichsmarks each year to the SS. In return for all this, Farben was assured of a continuous supply of fresh inmates, and was relieved of unfit inmates. In the light of this close cooperation between Farben and the SS, referred to by the defendant Ambros as "our new friendship with the SS", it is utterly inconceivable that the responsible officials of Farben did not know what was happening there.

With the Tribunal's permission, Mr. Sprecher will continue.

MR. SPEECHER: Responsibility. Such is the Farben record which this trial has laid bare. We have seen Farben integrating itself with the Nazi tyranny, turning its technical genius to the furnishing of gasoline, rubber, explosives and other commodities vital to the reconstruction of the German war machine, and emerging in Hermann Goering's entourage at the highest level of economic planning and mobilization for war. We have seen Farben poised for the kill, and subsequently swollen by economic conquest in the helpless occupied countries. Faced with a shortage of workers, we have seen Farben turn to Goering and Himmler, and persuading these worthies to marshal the legions of concentration camp inmates as tools of the Farben war machine. We have seen these wretched workers dying by the thousands, some on the Farben construction site, many more in the Auschwitz gas chambers after Farben had drained the vitality from their miserable bodies. Viewing the case as a whole, the charges in the indictment have been proved a hundred times over, and every day of evidence in this trial has served only to make the record longer, clearer, and more

terribly damning.

This is the record of I.G. Farbenindustrie Aktiengesellschaft -- a legal entity -- but the record was made by individual men. For these crimes someone is responsible. Farben was not a robot, it did not run by itself. When we use the word "Farben" we do not mean only the plants and materials and other physical properties of the corporation, nor do we mean only the legal concepts which constitute a legal entity. We mean also the individual men and women who worked in the plants and handled the materials. And we mean those fewer men who gave orders to the employees and agents of Farben and who directed, guided and controlled this vast complex of men and materials.

"Guilt is personal" we have heard defense counsel say, over and over again, throughout this long trial. With this general proposition the prosecution is in full accord, and in determining where to impose individual criminal responsibility for the Farben record we must apply principles of criminal law which are accepted in the legal systems of civilized nations generally. The requisite degree of participation, knowledge, and intent, to support and justify a finding of guilt, must be established. We do not seek here to incriminate and hold responsible for the Farben record all the shareholders who owned the corporation, nor all the employees and agents who furnished the human thought and energy that made Farben "run", nor even all those who had some share in the guidance and control of the concern.

### A. The Vorstand

"Guilt is personal" to be sure, but it by no means follows that individual guilt for the Farben record is nowhere to be found. Reading the closing statements of defense counsel this week and last, one is gradually lulled into the fancy that Farben was controlled and directed by some inhuman, superhuman will, and that those men in the dock were merely the piano keys on which the unearthly master played. We must guard carefully against being thus wafted away from reality to the realm of the supernatural. The Farben record was written by men, and somewhere



exists the guilt for the crimes in that record. Such guilt may indeed be attributable in part to persons not present in the dock, but it can profit these defendants nothing that we have charged too few rather than all, and it is far better that we punish too few rather than too many. We charge and believe we have proved that the major share of responsibility for the record as a whole must be assumed by the nineteen defendants who were members of the Farben directing body known as the Vorstand. For certain portions of the record, the four defendants who were not members must share responsibility, but for the moment let us concern ourselves with the nineteen of the Vorstand.

In approaching this question of Vorstand responsibility, two matters deserve to be stressed. The first is that, as abundantly appears from the record, Farben was a cohesive organization with coherent policies and a well-disciplined organization for carrying out those policies. Farflung and varied as were its properties and activities, it did not lack for central direction. It was caused to pursue this or that course of action just as, under the captain's control, a ship is made to sail in one direction or another.

This does not mean that the captain himself stokes the fires or spins the wheel or shoots the gun. For that he has engineering and navigation officers and other lieutenants. But a ship is commanded from the bridge, and Farben was commanded by the Vorstand.

The defense has sedulously endeavored to obscure this simple fact. Thus Dr. von Metzler, speaking on this general subject, told the Tribunal that<sup>1</sup>

"...the only legally sound approach to the general problem of responsibility is on the basis of dividing the responsibility among the different members of the Vorstand in accordance with the special tasks which were assigned to them, in other words, on the basis of the principle of decentralization, which was adopted within the framework of Farben..."

Thereafter Dr. Metzler proceeded to discuss at length the autonomy of each individual Vorstand member within his special field, the protean nature of the Farben complex, and in other ways endeavored to reinforce his contention that each of the defendants can only be held criminally responsible for activities within his special sphere of competence.

Now, of course, it is true that the Vorstand delegated wide authority to its individual members in their respective fields. And it is certainly true that this consideration may in some matters affect the degree of criminal guilt on the part of the individual defendants. We may well punish more severely the Vorstand member who initiated, directed, and immediately supervised the details of a particular criminal program than one whose connection with the crime was limited to his responsibility for overall management of the enterprise. All this is familiar ground.

But autonomy below does not negate responsibility above. To revert to the analogy of the ship; Dr. von Metzler would have us believe that the chief engineer was free to turn the engines on or off at will, and that the navigation officer was free to set his course for India or Brazil as struck his fancy. Such a ship would not live long in a stormy sea, and would soon run aground in even the calmest weather. Farben's enterprises

---

1. Closing Statement by Dr. von Metzler, part II, p.8.

were diverse, but they were not unconnected. They needed, in fact, the highest degree of coordination, and the whole structure of committees and Sparten and combines was carefully conceived to ensure flexibility of operations and autonomy as to the detail, subject to coordination and direction by the Vorstand. The Vorstand delegated freely to its individual members within the scope of its general policies, but it did not and it could not relinquish or shift the responsibility for overall management.

The second matter which we wish to stress is that the criminal law of all nations has long recognized responsibility for acts of omission as well as commission. Of course, a multitude of the items of criminal conduct charged in the indictment are acts of commission. If I recklessly drive my automobile at 80 miles an hour through the streets of Nurnberg, the driving itself is an act of commission, and I cannot defend on the ground that my failure to put on the brake was an act of omission. When Krusch, Ambros, and Bueckfisch took the initiative with Goering and Himmler to bring about the allocation of slave workers from Auschwitz to construct the Buna and gasoline factory, that was not an act of omission but of commission. When other Vorstand members learned of the Auschwitz situation and continued over a long period of time to approve funds, knowing the criminal nature of the project, their approval was an act of commission. And these examples could be multiplied a thousandfold. But we are not imputing vicarious criminal responsibility, nor are we invoking any novel principle of law, when we hold the defendants criminally responsible for a failure to act where they were under a duty to act. Persons who assume and undertake to operate a machine or guide the destinies of an enterprise — be it an automobile or a ship or a corporation — are under a duty so to exercise their power of control and so to discharge their management responsibility that the enterprise under their guidance does not embark on a criminal course of conduct.

Of course, the responsibility of an individual Vorstand member for



criminal acts committed under the immediate supervision of another Vorstand member is not unlimited. These limits, too, have been stressed by Dr. von Metzler<sup>1</sup>, but he has overstated them to the extent that the responsibility of the Vorstand for the overall management of the corporation dwindles to the vanishing point. True it is that details of particular operations might be beyond the knowledge of particular Vorstand members, and that under ordinary circumstances the members of the Vorstand were entitled to rely upon each other for honest discharge of their responsibility. But the charges in this case are not concerned with ordinary circumstances nor with normal details of peacetime operations. Whatever one may say about the life that these defendants led under the Third Reich, it was not dull. The defendants themselves have stressed again and again the extraordinary and novel circumstances which confronted them beginning in 1933 and lasting right up to the end of the war in 1945. The birth of a new political system, the establishment of a fearsome dictatorship, the emergence of the "police state", the sudden and enormous rearmament, with all the commercial and technical problems and opportunities which this posed for Farben, the probability of war looming ever larger on the horizon, the program of conquest which Hitler had publicly charted years before, the absorption of new countries into the Reich and the spread of German domination over most of the continent, the opportunity for commercial and industrial expansion opened up by conquest, the problems with respect to the allocation of men and materials which the war presented — all these and many more have raised questions of the utmost gravity for solution by the Vorstand as the governing body of I. G. Farben.

Nor did problems of such scope fall within the exclusive preserve of any one Vorstand member; they overlapped and affected every important facet of Farben activities. It makes a complete mockery of the whole concept of management responsibility to suggest that, faced with such kaleidoscopic and challenging problems of fundamental interest to the Farben enterprise

---

1. Closing Statement by Dr. von Metzler, Part II, pp. 19-28.

as a whole, the individual Vorstand member could adequately discharge his responsibility of management by confining his attention entirely to his own particular plant or line of business, and by relegating to other Vorstand members the solution of those matters which cut across all lines and divisions within the enterprise, and raised questions of such momentous material and moral importance. It is absurd, we submit, to conclude that the individual Vorstand members could have behaved or did behave in such ostrich-like fashion; the course of events under the Third Reich must have aroused in every Vorstand member the most consuming and vigorous curiosity as to how these new developments were affecting aspects of the corporate activities other than those with which he was immediately concerned, how other Vorstand members were coping with these developments, and what overall policies and conclusions should be arrived at for general application throughout the enterprise. To take but a single example, the shortage of labor in Germany brought about by the impact of war was not felt only in one Farben plant or Sparte, nor was it felt only in Farben. It was a matter of general concern throughout German industry. The use of foreign slave labor involuntarily brought to the Reich, and the use of concentration camp inmates, was a solution of the labor problem which was, to use the mildest possible term, decidedly novel in modern western civilization. Under the most conservative and restricted concept of management responsibility, this and similar matters were such as to call for the most careful and conscientious consideration by any man who undertook the responsibility of membership on the Vorstand.

On this whole question of responsibility, a word or two should perhaps be said about the type of law — national or international — which should govern. It is the prosecution's position that, in determining what position the Vorstand occupied in the structure of the corporation, and what its powers were, the Tribunal should look to the German law. But, once these circumstances have been ascertained by reference to the German law, the question of criminal responsibility of Vorstand members for crimes

under international penal law should not be determined by exclusive reference to German law or indeed the law of any one nation, but by principles common to civilized legal systems generally.

If we may submit a hypothetical illustration, let us assume that the German Reich has enacted a German statute establishing the Reich Ministry of the Interior, and prescribing the duties, functions, and scope of authority of the Minister. Let us assume further that the same statute prescribed that, because the Minister is a government official, he shall not be held criminally responsible for any acts committed by him in the exercise of his official authority. If the Reich Minister were subsequently charged with the commission of international crimes in the course of exercising his official authority, this domestic exculpatory provision would, we submit, not be governing. A court trying the Minister on such charges would, to be sure, look to the German statute to determine what the actual authority and responsibility of the Minister was. But once it had determined under German law that the Minister was authorized and competent within the field of activity in which the alleged crimes occurred, and that he had in fact knowingly ordered the commission of such crimes in his capacity as Reich Minister, they would then hold him criminally responsible under general principles of criminal law common to civilized legal systems, and would not allow the German exculpatory clause, alien to any normal concept of criminal liability, to frustrate and subvert the enforcement of international penal law. Of course, we are not confronted with any such dilemma in this case, and the above illustration is given only in the hope that it may clarify the theoretical basis of responsibility under international penal law.

Indeed, the German law on the authority and responsibility of the Vorstand is more than clear enough for the purposes of this case. The basic German statute — the Law on Joint Stock Corporations of 30 January 1937<sup>1</sup> — provided, under the heading "Management of the Joint Stock

1. Reichsgesetzblatt, Year 1937, Part I, No. 15



Corporations", that<sup>1</sup>

The Vorstand has to manage the corporation under its own responsibility in such a way, as the benefit of the enterprise and its staff (Gefolgschaft) and the commonweal (der gemeine Nutzen) of nation and Reich require it.

Subsequently, this same statute tells us that <sup>2</sup>

In their management of the business, the Vorstand members must exercise care of an honest and conscientious business manager.

Commenting on these provisions, in his treatise on the Law of Joint Stock Corporations, Dr. Schlegelberger, as Under Secretary of the Reich Ministry of Justice, writes:<sup>3</sup>

The basic duties of the Vorstand. The exclusive right of the Vorstand to manage the corporation establishes for it also the duty for management. The Vorstand, with the care of an honest and conscientious business manager (par. 84, subpar. 1), is to further the corporation to the best of his ability and to attend to the protection of its interests.

The defendant Ter Meer has given a description of the functioning in actual practice of the Farben Vorstand, from which the following is an extract:<sup>4</sup>

As the meetings of the KA and the TEA preceded the Vorstand meetings, most of the Vorstand members had been advised in advance of the more important matters which were to come before the Vorstand. This was specifically the case with technical matters because more than half of the Vorstand members were also members of the TEA and because I admitted "guests" from the commercial side, when commercial people were interested in particular points. Furthermore, Schnitz and von Knieriem participated regularly, von Schnitzler often, in the TEA meetings. I recall of no case where the decision previously taken in the TEA was reversed or substantially amended by the Vorstand. However, with respect to general commercial matters and general economic questions, there were often different opinions in the Vorstand meetings, such as the attitude toward a particular foreign concern, participations in other companies, etc.

1. Paragraph 70.

2. Paragraph 84.

3. Commentary on the Law of Joint Stock Corporations, by Schlegelberger and others, Berlin, 1939.

4. Prosecution Exhibit 330.

But we never reached a state whereby an actual vote had to be taken, because after some discussion had occurred, the opinion of the majority of those present was found out, and the decision was thereby taken without a formal vote or resolution of any kind. When the majority opinion was clear, Dr. Brueggemann, secretary of the Vorstand, merely saw to it that a final remark was inserted in the minutes to show the stand I.G. Farben took.

The Vorstand meetings usually lasted all morning, normally from about 10 a.m. to 2 p.m. If matters were not concluded within that time, the Vorstand meeting was extended into the late afternoon. Ordinarily the chairman of the Vorstand opened the meeting and made a report of 5 or 10 minutes for the Central Committee of which he was also chairman. This report came more and more to be concerned solely with personal appointments, contributions, and such matters. Thereafter I gave the report for the TEA meeting, which lasted ordinarily for 20 to 30

minutes. Thereafter, Dr. von Schnitzler, chairman of the Commercial Committee, gave a report which usually lasted for 30 to 45 minutes. Then the other members of the Vorstand who had inserted specific topics in the agenda of the meeting were called on and usually gave relatively short reports. In exceptional cases the technical members addressed the Vorstand with a more complete review of specific fields, as for example new developments in pharmaceutical research and application, the inter-relation of German and foreign oil concerns, etc. But the majority of reports came from the leaders of sales combines or dealt with questions of a commercial or economic aspect. Discussions took place after each topic of the agenda. It is my impression that the participation of the Vorstand members in discussing commercial matters was broader than the discussion of purely technical matters. This so much more as the commercial topics were easier to be understood when discussed in the Vorstand than the technical matters, especially when they referred to difficult chemical matters.

It thus appears that the Farben Vorstand in practice functioned in such a manner as to meet and discharge the responsibilities imposed upon it under the German law of corporations. In the Vorstand meetings, as well as in the meetings of the subordinate committees and other high level management groups, the individual Vorstand members were kept informed of major developments within the field of the corporation's activities. That the activities charged as criminal in the indictment and established by the evidence in this case fall clearly within the category of "major developments" we believe is beyond argument.

We have already touched on the general principles governing individual responsibility for criminal acts of a corporation which must flow from membership in the Vorstand. The responsibility of Vorstand members for criminal acts committed under the authority of the Vorstand has been repeatedly recognized by German courts, and we will content ourselves with making reference to only two decisions which seem especially in point. In a case which came before the Supreme Court of Germany - the Reichsgericht - the members of the Vorstand of a mining corporation were indicted for offenses against a statute regulating the employment of minors. It was charged that a violation of the statute was committed by way of



omission. The court rejected the defense that plant directors appointed by the Vorstand, rather than the Vorstand itself, were responsible for the management of the plant involved. In holding the Vorstand members criminally responsible, the Reichsgericht said that the representative of a legal entity:

by dint of his right and duty to represent the legal entity, must ensure that the law, particularly the statutes enacted in the public interest, are adhered to. He is as responsible as, in other cases, the physical entrepreneur, if he (the entrepreneur) does not fulfill his duties. He (the representative of the legal entity) must be regarded under the law as the responsible party instead of the entity which is not tangible but on whose behalf and for whose account he engages in business.

This, under the general principles of law, is a matter of course. So much so that in order to establish the criminal responsibility of the representatives of a legal entity in cases like this, there was no need for an express provision, [in the statute involved].

This judgment is by no means exceptional. Other German courts have applied the principles laid down therein. Indeed, the Supreme Court of Bavaria went beyond this decision, and imposed criminal responsibility even upon Vorstand members who voted against the particular course of action which was held criminal:

The Vorstand must either assume full responsibility for operating the legal entity; or if it does not want to assume such responsibility, it must resign .....

Even those members of the Vorstand who disagreed with the act for omission which constituted the violation of the Penal Code, are just as liable as those who supported the act or omission and obtained either result by a majority vote. Only by resigning from the Vorstand can criminal responsibility effectively be averted. A member who cannot make up his mind to take such a step, by the mere fact of keeping his position, accepts as his own the very decision he had opposed when it was taken.

These decisions of High German courts are in line with general principles of criminal responsibility well known in other civilized legal systems. The legal concept of a corporation or joint stock company has served useful purposes in the world of commerce. But it is not one of the purposes

in the world of commerce. But it is not one of the purposes of that concept that men who assume the high responsibility of directing a powerful organization such as I.G. Farben can shield themselves, when called to account, by pleading ignorance of the most fundamental policies and activities of the corporation, or by tearing the mantle of responsibility into individual shreds. To tolerate such an abdication of responsibility will do nothing but awaken the grave mistrust of millions of people in all countries who deal with or work for corporations, and will work great harm to companies and industry and to the integrity of the international business community. We ask this Tribunal to hold the defendants of the Farben Vorstand to standards of responsibility for criminal acts of the corporation similar to those applied generally in civilized legal systems, and we are confident that under such standards their guilt has been established beyond a reasonable doubt.

MR. MINSKOFF: Mr. Charvatz will continue with the reading of individual Participation.

MR. CHARVATZ:                      B. Individual Participation.

The question of individual responsibility as among these defendants for the crime in the Farben record does not, of course, hang solely or even primarily upon their membership in the Vorstand. The direct participation of each of them in ordering and directing criminal acts, through the instrumentality of Farben, through the holding of governmental office, or otherwise, has been proved by a wealth of evidence. We have summarized the evidence of direct participation by each defendant in our brief, and we will not retread all that ground at this time. But a few illustrations will, we believe, be useful. The defendant Kuehnle, for example, may be taken as a representative member of the Vorstand. He was not its chairman, nor was he the head of any of the three Sparten nor of either the Technical or Commercial Committees. But he was a member of the Vorstand throughout the period under consideration, and he was in charge of the

the Works Combine Lower Rhine, which had its headquarters in Farben's third largest plant, at Leverkusen. From the voluminous documentation concerning his activities, we will mention a few examples.

As Kuehne testified, the Leverkusen plant, which was his special charge was "one of the most versatile chemical plants in the world", including "the inorganic departments, the many-sided intermediate products plants, the dyestuffs plants, the photographic departments, the Buna Plant, and the various synthetic plants, the various scientific laboratories, the large engineering departments, individual pharmaceutical production plants, and finally one rayon plant". Kuehne was also, as he put it, "responsible for the workers, the care for the workers, and the employment of laborers in Leverkusen". The many sided character of the production within his special jurisdiction necessarily brought him knowledge of many aspects of German rearmament.

Soon after Hitler had become Chancellor of Germany, Kuehne called 149 of his department heads together for a meeting at the Leverkusen plant on 21 April 1933. Kuehne opened the conference by expressing his pleasure at the advent of the new government, and asked the leaders of his firm to work within the spirit of the new government for the welfare of Germany and of the firm. Before the meeting had progressed very far, the so-called "first measures" of air raid precautions were discussed in considerable detail. A large number of documents show a surprising concentration of interest in air raid protection even during these first months of the Nazi rise to power.

During 1933 and 1934, Kuehne made certain that his plant was attuned to the ideology of the German Labor Front and other Nazi organizations. In July 1935, Kuehne "advised [his departmental heads] to enter the German Labor Front" and was proud to note that Hossfeld, whom he described as a *Gesamleiter*, had noticed and praised the work of the Leverkusen plant. We need no better witness to the close relation of this German Labor Front



activity to the foundation of "a real military economic preparation for war" than General Thomas, who made this clear in so many words.

Beginning in 1935, experimental work on Buna was being rushed at Leverkusen under close coordination with the highest military authorities. It was made plain that the requirements of the Wehrmacht would

decisive in the Buna program. Kuehne was present at the first conference on synthetic oil at Ludwigshafen in January 1935 when among other things, the formation of Brabag, was discussed, and Bucofisch reported on the relation of Farbion to the entire Brabag enterprise.<sup>1</sup> During the same year, numerous military leaders visited Leverkusen to check the progress of projects other than Buna.<sup>2</sup> The stockpiling of pyrites was intensified during 1935, with the defendant Kuehne playing a significant role.<sup>3</sup> The TEA, of which Kuehne was a member throughout the period in question, approved credits for the construction of new magnesium plants and the stockpiling of magnesium. In September 1935, Kuehne and the other plant leaders of Farbion were advised of the reasons for the establishment of the "Vermittlungsstelle W".<sup>4</sup>

During the year 1936, Krauch began to spend most of his time in Berlin as a key figure in several of the government economic mobilization staffs, principally those headed by Hermann Goering. A letter from Kuehne to Krauch in April 1937 indicated that Kuehne made recommendations for staffing the Krauch office in a manner helpful to Farbion.<sup>5</sup> Beginning in 1937, Kuehne was asked by Vermittlungsstelle W to designate which departments of the Leverkusen plant would operate on a full-time basis in the event of war, and which would have to be put on a part-time basis or shut down.<sup>6</sup> During the same year, Kuehne was personally directing the appointment of confidential agents for military economic matters in Leverkusen, and the manner in which supply agreements and agreements with sub-contractors would be handled where the

- 
1. Prosecution Exhibit 518.
  2. Prosecution Exhibit 650.
  3. Prosecution Exhibit 749.
  4. Prosecution Exhibit 139.
  5. Prosecution Exhibit 2070.
  6. Prosecution Exhibit 186.

Wehrmacht was involved.<sup>1</sup> By the end of 1937, experiments on Tabun (poison gas) were already being conducted at Leverkusen.<sup>2</sup>

In August 1938, Kuehne published an article in a German magazine in which he stated:<sup>3</sup>

"The conception of achieving military preparedness is closely allied with the motorization of Germany, although the latter is also being carried out for other reasons.....The carrying out of motorization is clearly connected with the guaranteeing of German oil and motor fuel supplies."

From this quotation it is clear that the Four Year Plan did not appear to Kuehne as being primarily an economic recovery measure. The following month Dr. Struss, a Farben official associated with the Technical Committee, addressed a letter to numerous Vorstand members, including Kuehne, dealing with the transportation and delivery problems which might arise in the event of mobilization. This directive was based upon the express assumption "that deliveries cannot be made to Czechoslovakia, Russia, France, England, or overseas countries".<sup>4</sup> This was written just ten days before the Munich agreement, and reveals Farben preparing for the contingency of war in case Hitler's aggressive threats against Czechoslovakia proved ineffective, and that a "shooting war" resulted. At this same time, Kuehne was informed that the Central Committee of Farben had placed 100,000 Reichsmarks at

- 
1. Prosecution Exhibit 2069.
  2. Prosecution Exhibit 653.
  3. Prosecution Exhibit 2072, "The Chemical Industry and the Four Year Plan"; see also Tr. p. 10247-248.
  4. Prosecution Exhibit 223.



the disposal of the German Sudetenland Free Corps.<sup>1</sup>

Kuehne played a particularly important role in extending Farbon's interests into Austria, and in adjusting the Austrian economy in harmony with the purposes of the Four Year Plan and German rearmament. Just a few days before the invasion of Austria, the Farbon Chemicals Committee, of which Kuehne was Chairman, was endeavoring to increase its influence upon the Skoda Wetzlor firm, and less than a month later, the Chemicals Committee was planning negotiations to procure a 70% controlling interest in Skoda Wetzlor. When Farbon's objectives in Austria had been achieved, Kuehne became general director and chairman of the Vorstand of one of the principal new firms established at that time, Donau Chemie. The Jews were removed from management of the Austrian firms within a few months, and Kuehne approved settlement of "non-Aryan" claims "for no more than 60% of the amounts to which they have legal claim".<sup>2</sup> After the problems of ownership and control had been disposed of, Kuehne immediately turned to the establishment of a mobilization calendar for Donau Chemie. In March 1939, one of Kuehne's subordinates informed Vermittlungsstelle # that 3 "Dr. Kuehne agrees that you include the plants of Donau Chemie, A. G. in the general mobilization plans". Two months later, the same subordinate of Kuehne was writing that the preparations for mobilization "can be completed without difficulty before the deadline expires".<sup>4</sup> Thus, between the time of the conquest of Czechoslovakia and the attack on Poland, Kuehne saw to it that the newly acquired Austrian plants were absorbed completely into Farbon's general pattern.

- 
1. Prosecution Exhibits 834 and 1041.
  2. Prosecution Exhibit 1101.
  3. Prosecution Exhibit 2073.
  4. Prosecution Exhibit 2074.

of mobilization for war. Indeed, on the very day that Bohemia and Moravia were invaded (15 March 1939), Kuehne's "mobilization deputy" for Leverkusen attended a conference on mobilization which ran the gamut of all problems incident to the outbreak of war: Production, manpower supply, transportation, security questions, mobilization orders, changes in shifts and employment of women in case of mobilization, air raid precautions, etc.<sup>1</sup>

In October 1941, after the war was well under way, Kuehne conferred with Funk, the Reich Minister of Economics, and subsequently advised Schmitz that Funk was fully aware of Farben's vital role in the war. He quoted Funk as saying that:<sup>2</sup> "naturally, coal, iron, guns, and procurement of materials were necessary for waging war and the importance of these industries must not be underestimated. However, one thing we must establish, without the German I. G., and its achievements, it would not have been possible to wage this war." Kuehne, in his own words, "was overjoyed" and thanked Herr Funk "in the name of the whole I. G."

MR. CHARMATZ: Mrs. Kaufmann will continue.

MRS. KAUFMANN: From 1938 to 1944, Kuehne was chairman of Farben's Southeast Europe Committee. In October 1938, together with other Farben leaders, he made plans for taking over the Aussig-Falkensau plants in Czechoslovakia. In later years, after the German armies overran the Balkans, he became chairman or a director of a number of enterprises in southeastern Europe.

But his connection with Farben's exploitation of the German-occupied countries was by no means confined to the Balkans. He attended numerous meetings of the Vorstand, the

1. Prosecution Exhibit 239.

2. Prosecution Exhibit 2064.

Technical Committee, and the Commercial Committee when Farben's plans and activities in all the occupied countries were discussed and approved. He attended, for example, the important meeting of the Vorstand on 8 November 1939 when Wurster and Buergin reported on their tour of investigation in conquered Poland. He attended the meeting of the Commercial Committee in November 1940, when von Schnitzler reported on negotiations to acquire control of the French dyestuffs industry, and received a copy of von Schnitzler's report on the meeting at Wiesbaden with the French owners. He attended the Technical Committee meeting a month later when ter Meer reported:<sup>1</sup> "An agreement has been reached with the French dyestuffs group whereby we are assured of a decisive influence on French dyestuffs production." He was present at the Vorstand meeting in July 1941 when von Schnitzler reported the successful conclusion of negotiations with respect to Francolor, and at the meeting of December 1940 when Mann revealed the proposed license agreement with Rhone Poulenc. Kuehne's deputy, Dr. Hernecke, was present at a meeting in April 1940 when Mayer-Kuester reported that "the Norwegian economy will be mobilized to work for us", and Kuehne himself attended a Vorstand meeting in February 1941 at which there was a "detailed discussion" on the entire Norsk Hydro project, and at which "it was emphasized that I. G. has considerable interest in gaining a firm footing in Norway". Kuehne received a copy of the de Hans report on Germany's economic policies for Russia by which he became informed of the plans to strip industrial cities, and that "bigger firms like Farben" would not be excluded from participation in "reconstructing" the East.

As head of the Works Combine Lower Rhine and plant leader of the Leverkusen plant, Kuehne was thoroughly informed

I. Prosecution Exhibit 345.



about the problems of labor supply and labor procurement, and of its solution by the use of foreign slave labor. He was a member of the Plant Leaders Conference, under the direction of Schneider, at which everything from sick reports to disciplinary measures concerning foreign workers was discussed.<sup>1</sup> He was present at the Employers Advisory Council meeting of 11 March 1941, at which it was stated:<sup>2</sup>

"There is unanimous agreement that, in spite of many difficulties and in spite of the average inadequacy of the work obtained from foreign and compulsory labor, it will not be possible to dispense with them in the future either. Satisfaction is expressed generally that cooperation with the authorities and the German labor front in this sphere is favorable."

A report of July 1943 shows the Leverkusen plant informing the labor authorities that if the plant itself had not taken the initiative in procuring foreign labor, the failure of other agencies would have caused an embarrassing situation.<sup>3</sup> As late as August 1944, Leverkusen was still requesting the assignment of Eastern workers.<sup>4</sup> In December 1941 a Leverkusen circular noted that no social contact was permitted with the Polish workers, and described certain arrangements for segregating the Poles as much as practicable.<sup>5</sup> Leverkusen did not take advantage of official regulations authorizing

- 1. Prosecution Exhibit 394.  
2. Prosecution Exhibit 1350.  
3. Prosecution Exhibit 1378.  
4. Prosecution Exhibit 1393.  
5. Prosecution Exhibit 1372.

leaves for Poles because it was assumed that the Poles would not return to work.<sup>1</sup> The Leverkusen plant received foreign workers through the Swannet and Francois recruiting firm in Belgium, a firm of the type that the defendant Buerger referred to as "slave traders". In January 1942, Kuehne reported the importance of increasing the number of foreign workers and of retaining those already present in Leverkusen. In May 1943, it was reported in the Technical Management meeting at Leverkusen that female Eastern workers should be withdrawn from easy jobs to replace men on more difficult jobs.<sup>2</sup> Kuehne was almost always present at the meetings of the Technical Directors of the Leverkusen plant when labor matters were thoroughly aired.

- 
1. Prosecution Exhibit 1386.
  2. Prosecution Exhibit 1370.

During the early part of 1941, Kuehne heard the reports on the proposed Auschwitz project both in the Technical Committee and in the Vorstand.<sup>1</sup> He joined with his Vorstand colleagues in the decision that I.G. Auschwitz was to be financed by millions of marks of Farben's own funds rather than by the Government.<sup>2</sup> All together, the appropriation for Auschwitz by the Technical Committee, and ultimately the Vorstand, amounted to some ~~six~~ hundred million Reichsmarks. Kuehne was present in the Technical Committee and later in the Vorstand meeting when the credits for the construction of Monowitz were presented and approved. There is not the slightest indication that he or any other Vorstand member raised any objection.

We have reviewed in summary fashion some of the acts of the defendant Kuehne which show how unrealistic and far from the truth it would be to assume that each member of the Vorstand devoted himself exclusively to the special fields of activities in which he took the leadership, and knew nothing of other important affairs of the corporation. The very fact that a person, after years of experience in Farben, became a Vorstand member meant that he was thereafter expected to participate in the councils of the concern and play his part in shaping general overall policies. To do this he could not, and did not, close his eyes to what Farben was doing in fields other than his speciality. A Vorstand member kept in touch with general affairs of the concern not only through Vorstand meetings, but through the various and numerous subordinate committees, and through constant conferences and communications with other Farben officials in order to achieve the necessary degree of internal coordination.

We have used Kuehne as an illustration of this point, but the answer would be the same regardless of whom we might select. The Farben records reveal that, after Buetefisch and Gattineau visited Hitler in 1932 and received Hitler's assurance of support for the synthetic gasoline program,

1. Prosecution Exhibit 1418.  
2. Prosecution Exhibits 1418, 1419 and 1421.



"the leading men in I.G. made the important decision to maintain  
Leuna in full operation even if this entails sacrifices".<sup>1</sup>

Does the defendant Schmitz contend that he did not know the true  
nature, purpose, and result of this visit to Hitler? In 1936, Farben  
reached an agreement with the German authorities for the construction  
of the first big Buna plant at Schkopau. Does the defendant Herlorn,  
as a member of the Vorstand, the Central Committee and the Technical  
Committee during the whole period from 1933 to 1945, suggest that as  
a Vorstand member he blindly approved this project without knowledge  
of the vital significance of rubber and gasoline in the Wehrmacht's  
rearmament program? Was Baergin the only defendant who knew that  
the French and Belgian forced labor procurement firms were "jocularly"  
called "slave traders"? The documents show that Krauch advised Ambros,  
ter Meer and Duerrfeld that he had succeeded in persuading Goering  
to issue the order allocating Auschwitz concentration camp inmates to  
the Farben construction project. Did ter Meer and Ambros keep this  
fact to themselves when the Technical Committee and the Vorstand ap-  
proved funds for I.G. Auschwitz, at their next meeting? The defendant  
Oster was specially concerned with nitrogen, but he was a member of  
the Vorstand and regularly attended Commercial Committee meetings  
which dealt with mobilization questions and with Farben's plans and  
activities in Austria and Czechoslovakia. Is it credible that the  
defendant Oster — who had learned as early as January 1936 that "even  
if Oppau and some of the more endangered (nitrogen) plants should have  
to stop production through enemy action, the remaining capacity would  
be more than sufficient for war requirements"<sup>2</sup> — did he not under-  
stand the meaning of these mobilization conferences or the purpose of  
the project he approved as a member of the Vorstand? The defendant  
Wurster was plant leader of the Ludwigshafen-Oppau plant and head of  
the inorganic section; Ambros was head of the organic section. Wurster

1. Prosecution Exhibit 1977.

2. Prosecution Exhibit 2112.

has told us that he used to ride around the plant on his bicycle to check up on conditions in the interests of the workers. Did he not know that Ambros was doing at the same plant in the field of chemical warfare agents, and could he have avoided discovering that Ludwigshafen was a principal headquarters for coordinating the activities of I.G. Auschwitz?

In concluding this discussion of responsibility, we may note that the defendants have made extensive use of a defense which we may describe as "the sins of others", or, more idiomatically, "passing the buck". Where possible, of course, the effort has been to blame someone not connected with Farben for the crimes of the Farben record. In the case of Auschwitz, of course, the effort has been made to shoulder the entire blame. For many months, until the documents conclusively proved otherwise, Goering was solely responsible for the order allocating Auschwitz inmates to the Farben construction project. But when it has not been possible to pass the buck to someone outside Farben, it has been passed to deceased Vorstand members or other persons down the line, and even around within the dock. The commercial men have explained that they could not understand the ramifications of what the technical men were doing, and the technical men have denied any real knowledge of what the commercial men were up to. This, of course, is merely another facet of the defendants' effort to shatter the concept of criminal responsibility into such small pieces that we can not pick them up and put the pattern together again. This technique, of course, has no more legal validity in this trial than it had actuality from 1933 to 1945.

MRS. KAUFMAN: General Taylor will now continue with the Prosecution's statement.

THE PRESIDENT: The Tribunal will recess until one-thirty.

(Tribunal in recess until 1330 hours.)

1948  
10 June - A-LU-15-1-Schwab (Int. Garand)  
Court VI - Case VI

(The Tribunal reconvened at 1330 hours, 10 June 1948)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: You may resume, General Taylor.

GENERAL TAYLOR: Mr. President, before continuing with the statement, the Prosecution has noticed a mistake on page 50 of our statement, which we would like to correct. On page 50, the tenth line from the foot of the page, it is stated that the defendant Kuehne was the Chairman of the Farben Chemicals Committee. In fact he was a member but not the Chairman, and we would like to ask that the reporter make an appropriate correction in the record.

THE PRESIDENT: That correction will be made.

GENERAL TAYLOR: Mr. President, we have traced in outline the Farben record, and we have dealt with the general principles and the evidence relating to the responsibility of these defendants for the crimes revealed by the Farben record. There remain to be considered certain general defenses, of broad scope and far-reaching implication, which have been put forward on behalf of all of the defendants. These defenses appear, to a greater or less extent, in practically all the closing statements by defense counsel, but perhaps they achieve the greatest of concentration in Dr. Jahl's learned statement entitled "Fundamental Questions of Law".

Firstly, the Defense that the Crime against Peace is not yet a Crime.

In the first part of his plea, Dr. Wahl has restated the argument, ably presented before the International Military Tribunal by Dr. Jahreis, that the planning and waging of an aggressive war was not generally acknowledged to be a crime during the years in question - that is, 1933 to 1945 - and that therefore the punishment of the defendants before the IMT, and of the defendants in this case, was and would be legally invalid as in violation of the maxim nullum crimen nulla poena sine lege - better known to American jurists as the rule against



ex post facto law.

Now, this matter has, of course, been widely discussed in recent times and particularly since the First World War. Furthermore, the question is foreclosed in this proceeding by the express provisions of the Tribunal's basic jurisdictional enactment - Control Council Law No. 10 - as it was foreclosed before the IMT by the provisions of the London Agreement and Charter.<sup>1</sup> Both because the basic law is binding and because the point is far from novel, we don't propose to argue the question in extenso. But we ask leave to point out several considerations which are, we believe, beyond dispute.

The doctrine that the deliberate launching of an aggressive war is a mortal sine against civilization and a crime against the peace and against mankind, far from being novel, is centuries old. Its rebirth in modern times is substantially coincidental with the revival of the law of nations itself. Grotius, the seventeenth century father of modern international law, taught and urged upon society the distinction between a just and an unjust war.<sup>2</sup> Nearly two centuries ago, in 1758, in his classic "Law of Nations", Vattel wrote:<sup>3</sup>

Whoever takes up arms without a lawful cause, has therefore no rights whatever; all the acts of hostility which he commits are unjust.

He is answerable for all the evils and all the disasters of the war. The bloodshed, the desolation of families the pillaging, the acts of violence, the devastation by fire and sword, are all his work and his crime. He is guilty towards the enemy, whom he attacks, oppresses, and massacres without cause; he is guilty towards his people, whom he leads into acts of injustice, whom he exposes to danger without necessity or reason - towards those of his subjects who are ruined or

1. Judgment of the International Military Tribunal, Vol. I, Trial of the Major War Criminals, p. 219.

2. Grotius, De Jure Belli Ac Pacis, Books II and III.

3. Vattel, The Law of Nations or the Principles of Natural Law (Carnegie ed. 1915) p. 302.

injured by the war, who lose their lives, their property, or their health because of it; finally, he is guilty towards all mankind, whose peace he disturbs and to whom he sets so pernicious an example.

For a century and a half, the teachings of Grotius and Vattel and their many followers were the stuff of sermons and lectures, but not of treaties or judgments. But the unprecedented destruction of life and property during the First World War, and the terrible economic and social dislocations which followed in its wake, brought home to all governments and all peoples the realization that war is as much of a threat to the survival of humanity as murder is to the individual. From 1923 to 1929 substantially all nations -- individually, in treaties and declarations, and through international organizations such as the League of Nations -- denounced and outlawed war and declared the deliberate launching of aggressive war to be an international crime. In 1923, the League of Nations sponsored the draft of a Treaty of Mutual Assistance which declared that "aggressive war is an international crime". The Geneva Protocol of 1924 for the Peaceful Settlement of International Disputes, signed by forty-eight governments, also declared that "a war of aggression constitutes... an international crime". In 1927, the Eighth Assembly of the League of Nations, by unanimous vote of 48 delegations, including Germany, Japan, and Italy, adopted a declaration the preamble of which stated that "a war of aggression can never serve as a means of settling international disputes, and is in consequence an international crime". In February 1928, at the Sixth Pan-American Conference of 21 American Republics, it was unanimously resolved that a "war of aggression constitutes an international crime against the human species". Six months later, at Paris, 63 nations, again including Germany, Japan, and Italy, signed the General Treaty for the Renunciation of War -- the Kellogg-Briand Pact -- and thereby renounced and condemned war as an instrument of national policy for the solution of controversies. The Kellogg-Briand Pact was generally

construed, at the time of and subsequent to its signature, as making aggression unlawful. The Government of the United Kingdom publicly espoused this view in 1929,<sup>1</sup> and the United States Secretary of War, Mr. Henry L. Stimson, declared in 1932 that, as a result of the Pact, war "has become illegal throughout practically the entire world." In short, during the decade from 1923 to 1932, hardly a year passed without one or more solemn denunciations of aggressive war as illegal and criminal by substantially all the nations of the world and it is against this legal and historical background that the provisions of the London Agreement and Law No. 10 must be considered.

As we stated earlier, the juridical basis of the crime against peace has already been ably discussed and adjudged at Nurnberg — by Mr. Justice Jackson, Sir Hartley Shawcross, Professor Jahreis, and the International Military Tribunal itself. In all humility, the prosecution finds it difficult to go much beyond what has been said in with all deference, we suggest that Dr. Wahl's statement, learned as it is, sheds little new light on the question. Dr. Wahl, like Dr. Jahreis, contends that, failing some international treaty or agreement which not only declares aggressive war to be criminal, but also prescribes the punishment and establishes a court for the trial of offenders, the launching of an aggressive war may indeed be sinful, but it cannot be criminal. We believe that this view is based on a totally erroneous conception of the true nature of international penal law, and the way in which it has developed during the past century. We may well be on the brink of an international penal law to be enacted and codified by international legislation, and enforced by courts of general international jurisdiction. But at least up to the end of the Second World War — during the years with which we are now concerned — international penal law developed, like the common law, by

---

1. Vol. III, Trial of the Major War Criminals, pp. 100-101.



Judicial exposition and enforcement of principles which had won general acceptance, as reflected in treaties, declarations, and other official and authoritative pronouncements.<sup>1</sup> This has nowhere been stated with greater clarity and precision than by Mr. Stimson, who writes of the IMT judgment as involving crimes against peace:<sup>2</sup>

Now this is a new judicial process, but it is not ex post facto law. It is the enforcement of a moral judgment which dates back a generation. It is a growth in the application of law that any student of our common law should recognize as natural and proper, for it is in just this manner that the common law grew up. There was, somewhere in our distant past, a first case of murder, a first case where the tribe replaced the victim's family as judge of the offender. The tribe had learned that the deliberate and malicious killing against the whole community. The analogy is exact. All case law grows by new decisions, and where those new decisions match the conscience of the community, they are law as truly as the law of murder. They do not become ex post facto merely because until the first decision and punishment comes, a man's only warning that he offends is in the general sense and feeling of his fellow men.

Indeed, as the IMT pointed out, Dr. Wahl's argument would apply equally to the laws and usages of war and the Hague and Geneva Conventions, none of which prescribe specific penalties for their violation or establish courts for their enforcement. Yet, for many years past, military tribunals have tried and punished individuals guilty of violating these rules.<sup>3</sup> To this Dr. Wahl can only make the meaningless rejoinder that:<sup>4</sup>

"This comparison is invalid because infringements of military law have always been punished by the law of common usage... among

1. Dr. Wahl recognizes this truth, but abandons it as soon as it begins to hurt (pp. 21-22 of his brief.)
2. The Nuremberg Trial: Landmark in Law, by Henry L. Stimson, in Foreign Affairs, (January, 1947), p. 185.
3. Vol. 1, Trial of the Major War Criminals, pp. 220-21.
4. Dr. Wahl's brief, p. 11.

the hypotheses for which figure the proof of precedent....."

We need hardly point out that this argument is self-destructive.

Every new development in common law springs from a new case posing a new problem; that is what we mean by a "case of first impression".

No doubt counsel for the defense in war crimes trials in years gone by made precisely the argument Dr. Nohl is making here; indeed, a very parallel argument appears to have been made at the famous Breisach trial in 1474.<sup>1</sup> The argument failed at Breisach, it failed to prevent the laws of war from attaining judicial validity, and, we earnestly suggest, it must fail today. No one with any understanding of the nature of common law will confuse a case of first impression with ex post facto law; such a case imposes ex post facto punishment only if it erroneously enforces a standard of conduct which has not won general acknowledgement. On this point, too, Mr. Stimson has spoken authoritatively:<sup>2</sup>

The charge of aggressive war is unsound, therefore, only if the community of nations did not believe in 1939 that aggressive war was an offense. Merely to make such a suggestion, however, is to discard it. Aggression is an offense, and we all know it; we have known it for a generation. It is an offense so deep and heinous that we cannot endure its repetition.

1. A Forerunner of Nuremberg: The Breisach War Crime Trial of 1474, by Georg Schwarzenberger, in the "Manchester Guardian", 28 September 1946.
2. The Nuremberg Trial: Landmark in Law, by Henry L. Stimson, in Foreign Affairs, (January 1947), p. 185.

The law made effective by the trial at Nuremberg is righteous law long overdue. It is just such cases as this one that the law becomes more nearly what Mr. Justice Holmes called it: "the witness and external deposit of our moral life."

Secondly, Mr. President, "The Defense That War Crimes have Ceased to be Crimes"

When he comes to counts Two and Three of the indictment, Dr. Wahl turns full circle. Aggressive war, we have been told, has not yet attained the status of a criminal concept. War Crimes, we are now told, are the outmoded offspring of nineteenth century liberalism. Discussing the writing of an American authority on international law<sup>1</sup>, Dr. Wahl appears to regret that the author "can not make up his mind to declare the Hague Agreements entirely obsolete", but quotes approvingly a passage written in 1940 or 1941, when German forces were occupying a large part of Europe, and which states:<sup>2</sup>

"If one considers the treatment now meted out to enemy property and civilians in belligerent countries and in naval warfare, one is driven towards the conclusion that the protection of civilians in occupied regions provided by the Hague Regulations is becoming a limited survival rather than the expression of universal trends and practices."

We forbear to inquire what circumstances in the world around him induced the author to make this pessimistic observation. It is more important, we think, to note that Dr. Wahl, having endeavored to erase the first half of the indictment by crying "too soon!", now endeavors to expunge the second half with the admonition "too late!" In short, part of the indictment is premature, and the remainder obsolete.

Most of Dr. Wahl's argument on this point is an effort to sustain and establish the proposition that, because naval

1. The International Economic Law of Belligerent Occupation, by Ernst H. Feilchenfeld (1942).

2. Dr. Wahl's brief, pp. 44, 45.



and aerial warfare attained a new pitch of violence during the recent war, the Tribunal should therefore ignore the laws and customs of war relating to belligerent occupation. This point of view has been urged by the defense in other trials here. It was analyzed and disposed of by Tribunal V in Case No. 7,<sup>1</sup> and by Tribunal II in case No. 9,<sup>2</sup> and the Prosecution has commented on this theory on several prior occasions.<sup>3</sup> We have little to add now to these earlier statements and judgements. Dr. Wahl has gone so far as to suggest that "the measures employed by the German occupation forces, in whatever legal form they were clothed, could apply only for the duration of the war".<sup>4</sup> Surely it will be but scant comfort to the friends and relatives of the thousands of Auschwitz inmates who died on the premises of I.G. Auschwitz, or were discarded there as fit only for Birkenau, to learn that the policies and practices which caused this slaughter were temporary. In any event, it seems to the Prosecution that here Dr. Wahl is taxing our credulity too heavily. We perhaps cannot envisage in every detail what Europe would be like today if Germany were still the Third Reich, if German arms had been victorious, and if German peace prevailed from the Atlantic to the Volga, but at least some details are clear. The plans which the leaders of the Third Reich entertained for the benefit of the peoples of other European countries were set forth in a multitude of books and pamphlets and speeches and they are matters of common knowledge. Does Dr. Wahl seriously expect us to believe that German

1. United States v. List, et al. Tr. pp 10541 -42.
2. United States v. Ohlendorf, et al. Tr. pp. 6722-27.
3. Rebuttal statement in United States v. Flick et al 29 Nov. p. 4015. Closing statement in United States v. List, et al. Tr. p. 10410-13. Closing statement in United States v. Ohlendorf, et al., Tr. p. 6589-94.
4. Dr. Wahl's Brief, p. 42.

occupational policies towards the Jews would have changed after the Third Reich had cemented its military conquest? Are we to assume that the enslavement to forced labor of Poles, and of other nationalities so often scorned as "inferior" peoples, would have come to an end? It would be idle, we think, to multiply such questions, Himmler and Darre and Loy, and the Farben documents in this very record, have given us the answer. We find no basis in the record of this or any other trial, or in any other facts of common knowledge, to warrant us in indulging Dr. Wahl's assumption.

For the future, Mr. President, it is perhaps more deeply significant to grasp the all-together destructive effort which these views would have on the integrity of international law. Indeed, under the twin impact of "too soon" and "too late" there is nothing left.

Mr. President, Mr. Amchan will continue.

MR. AMCHAN: Mr. President.

"Window Dressing" and its Relation to the  
Credibility of the Defense Case.

The evidence submitted by the Prosecution in this case consists in the main of contemporaneous documentary records of I.G. Farben or of various German government agencies. In some special fields, Farben records were destroyed, and in those cases we have endeavored to fill in the record by the documents of other government agencies or by the testimony of former Farben employees and government officials. Despite certain gaps, however, the documentary evidence is not only voluminous but highly incriminating, and the defense has adopted a special line of explanation with respect to many of these documents, which they themselves have labeled "window dressing". The general nature of this defense is that the defendants did not really want to cooperate with the Third Reich in preparing for and waging war, or in exploiting the populations and properties of

occupied countries, and that they therefore frequently worded their documents and reports in such a way that the Nazi party or government officials would not be able to discover how uncooperative Farben really was.

In a few moments, we shall review some of the evidence bearing on this very question; it is certainly true that the phrase "willingness to cooperate" does not adequately describe Farben's attitude since we will find Farben again and again taking the initiative rather than merely expressing the desire to be helpful. We think this evidence will clearly establish that in fact the Farben leaders had no reason to conceal their motives and activities from the party and the government officials, but first it will be interesting to examine a few examples of this alleged "window dressing", and to note the relationship which they bear to the whole question of the credibility of the Defense case.

An early example of "window dressing" occurred in May, 1938, about two months after the meeting of the Commercial Committee, described by the defendant Haeffliger, at which the incipient invasion of Austria and the possible "short thrust" into Czechoslovakia was discussed. At the meeting in May, the Commercial Committee discussed the employment of <sup>1</sup> "Sudenten Germans for the purpose of training them with the I.G. in order to build up reserves to be employed later in Czechoslovakia". The Farben witness Frank-Fahle explained <sup>2</sup> this as follows:

When the development in Czechoslovakia started, everybody could see that Hitler planned to get the German part of Czechoslovakia back....We in the I.G. had also some imagination and read in the newspapers about the atrocities against Sudeten-Germans.....but knowing that Hitler had had success in his foreign political actions without being stopped by anybody....when he occupied Austria, he was not stopped by

1. Prosecution Exhibits 833, 1612.  
2. Tr. p. 2033-2034



anybody--we thought that he might succeed without causing any way in regaining the German part of Czechoslovakia. The point to us in the I.G. was to be a little bit more careful in case such things happened, than in the case of Austria, in other words, when Hitler succeeded, which he did, in getting Czechoslovakia in a peaceful way, not to find the I.G. again having done nothing. This resulted that we asked our representatives in Czechoslovakia....not to continue to employ the non-Aryan lawyers... but for window dressing," we employed some Sudeten-German lawyers.

In this case, as we see, "window dressing" was used, not to conceal and "uncooperative" activities, but to support Farben claims in Czechoslovakia.

Another example of "window dressing" was offered by the defendant Gajewski, who had testified that a new Farben plant for photographic film, constructed in 1938, had no relation to rearmament. Gajewski was shown a letter<sup>1</sup> which proved that he had represented to the Reich Ministry of Economics that the principal purpose of the new factory was "to enable the Air Force to cover its requirements for aerial film in accordance with the demands of the Reich Air Ministry". This letter Gajewski explained as follows:<sup>2</sup>

to make color film.....They would have said, 'I won't give you any iron for that.' But if I go to them and say, 'I want to make aerial film too', then I get it immediately..... We pretended something to give as an excuse so we could get approval."

Then the defendant Gajewski was asked:

"Q. Now, Dr. Gajewski, do I understand you to say that you intended to deceive the Wehrmacht with respect to the purpose of construction of this plant?

A. Well, deceived -- let's call it 'window dressing.'

Q. Well, would that have been sabotage in the Third Reich?

A. One could interpret it that way....."

1. Prosecution Exhibit 1947.

2. Tr. p. 8313.

The defendant Ambros testified that Farben kept the Francolor plant in production in order to support the French economy. When he was shown a series of documents stating that in fact the main purpose was to produce materials needed by the Wehrmacht he, too, explained such documents as "window dressing". Similarly, von Knieriem explained his memorandum detailing the military benefits which Germany received from Farben's dealings with the Standard Oil Company as "window dressing" in case these relationships were investigated by the Nazi legal authorities. But perhaps the most unique type of window dressing is employed by the defendant Haeffliger, who appears as a German national or a Swiss national, according to the needs of the situation. As we noted earlier, in August 1939, Haeffliger wanted to renounce his Swiss citizenship and become a German Citizen, but refrained from doing so at the request of the Farben Vorstand so that he could "render Germany very good services" and unobtrusively negotiate abroad, questions regarding war".<sup>1</sup> During the war, we find him in Germany as a German citizen, and we see him travelling abroad as a Swiss citizen. And finally, to top it off, his counsel pleads on his behalf:<sup>2</sup>

"It is for the first time that a foreign national appears in the dock of one of the Nuremberg Tribunals, and it is a tragic irony, that this man who is indicted for crimes against peace and humanity is a citizen of a country and even represented it for several years, after the Nazis came to power, as a Consul, which for generations was regarded as the incarnation of neutrality and love of peace and freedom."

Since this matter of "window dressing" had been raised by the Defense, the prosecution finds itself bound to advert to certain testimony by the defendants in this courtroom which can perhaps most charitably be described as "window dressing!"

1. Prosecution Exhibit 2015.

2. Closing Statement of Dr. von Metzler on behalf of the defendant Haeffliger, p. 1.

Some stress has been laid by several of the defendants on individual efforts which they made, allegedly at great risk, to befriend and protect unfortunate Jews.

Such representations have been made for example, in connection with the annual contributions of 100,000 Reichsmarks to the notorious "Himmler Circle" which were made by Farben each year beginning in December, 1941. In view of the fact that the first such contribution was made at the time when Farben was negotiating with the SS for additional inmates from the "Auschwitz concentration camp for use in constructing the Auschwitz Buna plant, and particularly in the light of the defendant Ambros' description of the "profitable" nature of our "new friendship with the SS", the Prosecution, not unnaturally, attached some significance to these contributions. However, the defendant Ambros assured us from the witness box, that the true reason for the contributions, as told to him by Schmitz, was in order to put Farben in a better position to secure the release of Arthur Weinberg, a former Jewish member of the Aufsichtsrat of I.G. Farben, from a concentration camp.<sup>1</sup> This testimony was buttressed by an affidavit from Weinberg's son-in-law (Count Spreti), purporting to confirm the testimony that Schmitz had helped, or endeavored to help, bring about Weinberg's release by intervention with Himmler for that purpose. Cross-examination of Count Spreti, however, elicited the fact that Weinberg was first deprived of his liberty by confinement in a concentration camp in June of 1942, over six months after Schmitz decided to make the contributions to the Himmler Circle, and four months after the actual transfer of the funds.

1. Tr. p. 5158-59.



One other example will suffice. The defendant Gajewski urged in his defense that he had been constantly in trouble with the SS and the Gestapo because of his opposition to the Nazis, and submitted to the Tribunal the affidavit of a certain Dr. Ollendorf in order to substantiate the contention that he had taken the part of Jews at great personal risk. On cross-examination, Gajewski was confronted with a document showing that he had informed the SS in November 1938 that Dr. Ollendorf intended to leave Germany, that it would be "in the general interest of the economy not to permit Dr. Ollendorf to go abroad for the time being", and further that it would be "advisable to have his home searched."<sup>1</sup> It was further developed on cross-examination that Gajewski never told Dr. Ollendorf, who furnished the affidavit in generous ignorance, that it was Gajewski himself who had thus laid the ground work for Ollendorf's arrest and detention in a concentration camp.<sup>2</sup>

Testimony of the foregoing character, we submit, must not be overlooked in assaying the last major general defense which has been urged upon the Tribunal. Almost all the defense counsel have argued that the defendants can not be held criminally responsible for acts which, allegedly, were committed under the stress of necessity induced by fear of the tyrannical, oppressive regime of the Third Reich. We believe that this defense, assuming its legal validity, is based upon demonstrably false factual assumptions as far as these defendants are concerned, and that the evidence in this case completely cuts the ground from under such a plea.

Indeed, the evidence showing that these defendants themselves took the initiative, and that the acts charged against them as crimes were performed not only voluntarily but eagerly, is so compelling that we would normally be inclined to pass over the question of the legal sufficiency of this defense, were it bottomed upon proven facts. But the legal question which this defense raises, albeit academic in this case, is of fundamental importance in the wise application and development of international penal

1. Prosecution Exhibit 1957.

2. Tr.p. 8325-27.

law. The Defense of necessity, or of compulsion by fear and coercion, or some analagous plea, has been made in all the Nuernberg trials, and, indeed, in almost all war crimes trials, and we may be reasonably sure that it will be raised in future trials as well. It is for these reasons that we venture a few observations on the point, though realizing they may be superfluous in the light of the evidence in this case.

The defense of necessity or compulsion is closely related to, but by no means identical with, the so-called defense of "superior orders" which is frequently raised in military cases. The reason that superior orders are sometimes given weight in military cases, not as a defense but as a plea in mitigation, is based upon two quite distinct ideas. The first is that an army relies strongly, in its organization and operations, on chain of command, discipline, and prompt obedience; the soldier is in duty bound under ordinary circumstances, and also under very extraordinary circumstances, to carry out his commander's orders immediately and unquestioningly. The second reason is that the soldier stands in fear of prompt and summary punishment if he fails to carry out orders or obstructs their prompt execution by over-much questioning. Despite the weighty import of these two factors, the military law of most nations, including Germany, provides that a soldier is not required to carry out orders which he knows to be criminal, and in fact may be held criminally liable for their execution if he was aware of their criminal nature. A tribunal trying a soldier for an offense committed with full knowledge of its criminal character may, nonetheless, allow the plea of superior orders to be given such weight in mitigation as in its judgment the ends of justice require. These principles have been confirmed in numerous judgments and decisions under the laws and customs of war, and have been amply explored in numerous judicial opinions in Nuernberg and elsewhere.

In criminal cases involving civilians, however, many of the governing considerations are very different. It is quite true, of course, that every citizen owes a duty to obey the lawful injunctions of his government.

But the organization of ordinary civilian society cannot be compared to that of an army; even under an authoritarian regime, it is much looser and leaves far more scope, initiative, and choice to the civilian in the governance of his own manner of life than is the case in an army. So too, the civilian stands in fear of punishment if he disobeys the law, but the alternatives and choices open to a civilian faced with an illegal statutory decree are far wider than those available to soldiers. No legitimate parallel can be drawn between the excuses open to a soldier acting in the heat of battle, and those open to a civilian pursuing a course of conduct over a period of several years.

In domestic penal law, of course, the necessity or coercion urged as a defense does not ordinarily arise out of compulsion exercised by the government itself, but rather out of threatening conduct on the part of another individual or group of individuals. The defense goes under a number of names: "Necessity",<sup>1</sup> "compulsion",<sup>2</sup> "force and compulsion"<sup>3</sup> and "compulsion, coercion and compulsory duress".<sup>4</sup> Most of the cases where such defenses have been passed upon have involved such situations as two shipwrecked persons endeavoring to support themselves on a floating object large enough to support only one of them, the throwing of passengers out of an overloaded life boat, or the participation in crime under the immediate and present threat of grave bodily injury. The legal principles to be applied in passing on such defenses have been variously stated, but there appears to be no great difference as between the legal systems of various nations. Thus Section 52 of the German criminal code states:

"A crime has not been committed if the defendant was coerced to do the act by irresistible force or by a threat which is connected with a present

1. Vol. I, Wharton's Criminal Law (12th Ed. 1932), Sections 126-128, 642 and 643.
2. Id., Section 124.
3. Id., Section 137.
4. Id., Section 384.



danger for life and limb of the defendant or his relatives, which danger could not be otherwise eliminated."

An authoritative statement of Anglo-American law on the subject is:<sup>5</sup>

"The fact that a crime is committed under coercion and compulsion, in fear of instant death, may be set up as a defense to the prosecution for the commission of such crime; but, to be available as a defense, the fear must be well-founded, and immediate and actual danger of death or great bodily harm must be present, and the compulsion must be of such a character as to leave no opportunity to accused for escape or self-defense in equal combat. It would be a most dangerous rule if a defendant could shield himself from prosecution for crime by merely setting up a fear from or because of a threat of a third person."

A classic statement of this rule, by Lord Denman, is, in summary, that no man, from fear of circumstances to himself, has the right to make himself a party to committing mischief on mankind.<sup>6</sup> More recent decisions of American courts tell us that a threat of future injury

5. Vol. I, Wharton's Criminal Law (1932), Section 384.

6. Regina v. Tyler (1939), 8 Car. and P. 616.

is not sufficient to raise a defense, that threats from a person who is a mile away at the time of the commission of the crime is no defense, that the risk of combat with a relentless companion does not, in any degree whatsoever, justify the slaying of an innocent man, and that there is no principle of law which would justify or excuse anyone in taking the life of an innocent man to protect himself.<sup>1</sup>

The application of these principles in the field of international penal law, where the defense of necessity is based on alleged fear and coercion exercised by the government itself, is, as we have suggested, a question of great moment in the development of international law. In their application to civilians, these principles were considered in the judgment of Tribunal IV in Case No. 5,<sup>2</sup> and in their application to governmental and military officials they have been discussed in practically every judgment rendered in Nurnberg. With all respect to the judgment in the Flick case, we think the defense of necessity was there allowed a scope which stretches, if indeed it does not exceed, the appropriate limits. Certainly it goes far beyond what has been previously allowed in cases under domestic penal law, where the defense has rarely, if ever, been successful unless the threat of bodily injury was present and immediate, rather than future and possible, or even probable. We respectfully suggest to the court that international crimes committed under color of official tolerance or government edict have most frequently occurred in the past, and will most frequently occur in the future, under tyrannical and dictatorial governments. Making all allowances for the hard realities of life under such a regime, the law should not be so devitalized as to encourage the abdication of that individual and community sense of moral responsibility which is the most powerful influence in checking such widespread crimes and atrocities. As the IMT stated with respect to the London Charter, and as is equally applicable under Law No. 10:<sup>3</sup>

1. *People v. Ropke*, 103 Mich 459 (1895); *Leach v. State*, 99 Tenn 584 (1897); *Rissolo v. Commonwealth*, 126 Pa. 54 (1882).  
2. *United States v. Friedrich Flick, et al.*, Tr. pp. 10991-95.  
3. Vol. I, *Trial of the Major War Criminals*, p. 223.

"...the very essence of the Charter is that individuals have international duties which transcend the national obligations of obedience imposed by the individual state. He who violates the laws of war cannot obtain immunity while acting in pursuance of the authority of the state if the state in authorizing action moves outside its competence under international law."

If international law does not mean this much, it means very little.

But let us return to the situation that actually confronts us in this case. Whatever is a title of decision or emphasis there may be between the Flick case and the other cases, it is universally agreed -- and was expressly held in the Flick case -- that the defendants can draw no comfort from the defense of necessity if it appears that their criminal action was taken on their own initiative, or transcended what was required of them, or that fear and coercion in fact played no part in their decision to take such action. What does the Farben record show? We have analyzed it at some length in our briefs<sup>1</sup> and will content ourselves here with a brief re-capitulation.

In the light of the documentation in the record, the clear proof of the gigantic, protean, and energetic contributions which Farben made to the recreation of the Wehrmacht, it is clear that any claim that the defendants were under duress during the years preceding the outbreak of the war in 1939, is baseless. We know that Farben took the initiative from the very beginning, when Gustafsch and Gattinone enlisted Hitler's support in 1932 for Farben's synthetic oil program. We have seen how impressed the military and civilian government officials were with the terrific initiative which Farben subsequently displayed in the field of synthetic gasoline.<sup>2</sup> We have read the notes of the meeting between the defendants Dr. Meer and Kuehne and General Kesselring, at which Farben vigorously pressed for an increased share in the manufacture of electron metal for the Luftwaffe, and urged that another firm (Wintershall) should be excluded from this business because Farben "had acquired great merit for developing the electron metal" as well as because Farben "had developed

1. Final Brief of the Prosecution, Part V, p. 2-11.

2. Prosecution Exhibits 517 and 540.



a safe process of filling the textile cylinders (their code word for incendiary bombs) quite different from the methods previously used".<sup>1</sup> We have seen that Krauch pushed Farben's interests in the synthetic rubber field so vigorously that it aroused complaints in the German Army Ordnance Office itself.<sup>2</sup> We have read the letter to Krauch stating that the recent development of poison gases was due to "the driving forces of industry, especially of I. G. Farben".<sup>3</sup> Surely Krauch was not coerced into accepting his high position on Hermann Goering's staff in the Four Year Plan; all the Farben elder statesmen approved this move. And, when Krauch realized in June 1938, that the OKW's armament calculations were erroneous, he displayed great initiative in bringing the errors to Goering's attention and in drawing up the so-called Karin Hall plan. Krauch himself has told us that:<sup>4</sup>

"I had the feeling that they were going to war. Dr. Bosch told me in June 1938, and that was when I went with the wrong figures of Loeb to Goering and said to him, 'We can't go to war because the figures are all wrong. We will lose the war on this basis.'"

It is equally difficult to take the defense of necessity seriously if we look at the evidence under Count Two of the indictment. In the case of the Polish dyestuffs factory, von Schnitzler's offer of Farben "exports" met with coolness, if not actual resistance, on the part of the Nazi government officials. Farben's ultimate success in Poland was due to persistence and perseverance: At first, Farben succeeded in having its representatives appointed as trustees of the Polish factories;<sup>5</sup> then a lease was suggested;<sup>6</sup> finally, Farben acquired title.<sup>7</sup> In the case of the oxygen plants in Alsace-Lorraine, Wurster and Jachne took the initiative in approaching the government authorities, and reported that the result for Farben was "very gratifying" because in the course of the discussion it appeared that "an agreement according to our wishes could be reached."<sup>8</sup>

1. Prosecution Exhibit 578.
2. Prosecution Exhibit 552.
3. Prosecution Exhibit 438.
4. Prosecution Exhibit 437, p. 13.
5. Prosecution Exhibit 1140.
6. Prosecution Exhibit 1143.
7. Prosecution Exhibit 1150.
8. Prosecution Exhibit 2062, p. 2.

As a result, Farben succeeded in acquiring title to some of the plants,<sup>1</sup> while others were leased to it.<sup>2</sup> There were oxygen plants in Belgium and Holland as well. With respect to these, Farben's policy was, according to its own records, to "offer technical and commercial help and intimate, in a cautious form, our preparedness to take an interest in the plants should the RM so desire".<sup>3</sup> Is the Tribunal now asked to believe that the acts charged under Count Two were committed under the stress of fear and coercion? It certainly is not an oppressed or frightened spirit which pervades the Farben circular letter of 1942 exhorting its agencies "to be on the alert when the plants named in the enclosure are occupied by the German troops so that we can get in touch immediately with the competent authorities".<sup>4</sup> The enclosure in this letter listed Russian factories in the fields of dyestuffs, plastics, rubber, etc., as far away as Western Siberia. In the case of Norway, Krauch and Buergin recommended and brought about Farben's participation in exploiting Norwegian industrial installations for the German Air Force, with the avowed purpose of obtaining control of the Norwegian hydroelectric power works, and because Krauch saw in the project "a unique opportunity in I.G. Farben's aluminum field".<sup>5</sup>

In passing to Count Three of the indictment, we may pause to note that the defendants have not hesitated to stress the initiative which they displayed in connection with matters which are thought to reflect credit on themselves. The defendant Hoorlein, for example, made much of his "fight for the freedom of science" in combatting a decree issued by Goering in 1933 which forbade experimentation upon animals.<sup>6</sup> We forbear to suggest that such a decree for the benefit of animals, misguided as it would have been, might conceivably have had a beneficial effect less than a decade later, when Farben drugs, among others, were used for experiments on human beings, because the defendant Hoorlein claims that, in his fight against the Goering decree, he "was the representative who

1. Prosecution Exhibit 1235.  
2. Prosecution Exhibit 1228.  
3. Prosecution Exhibit 2062, p. 4.  
4. Prosecution Exhibit 1187.  
5. Prosecution Exhibit 585, p. 4.  
6. Tr. p. 6137, 6164.

carried on the struggle in Germany against a hateful and powerful opponent". Indeed, Dr. Wahl has expanded upon this claim and applied it to all the defendants:<sup>1</sup>

"Yes, the defendants were justified in saying that they fulfilled a higher duty in remaining at their posts in order to oppose the evil, insofar as this was within their power, and to strengthen the good, rather than in escaping from their responsibility, thus leaving the field open to an unscrupulous successor who would have served the regime well."

But did the defendants "oppose the evil insofar as this was within their power"? Did not they themselves "serve the regime well"? Let us take a last look at the Farben record. We need not look very far to see where the initiative, energy, and driving force of I.G. Auschwitz came from. It is here in this room:

1. It was Krauch who requested the insurance of the original Goering order making 8,000 to 12,000 inmates of the concentration camp Auschwitz available for building the Buna plant at Auschwitz.<sup>2</sup>

2. It was Krauch's suggestion that the Himmler Order to the SS was issued, implementing the Goering Order.<sup>3</sup>

3. It was Eustefisch who translated these two decrees into action by securing from SS Obergruppenfuehrer Wolff the necessary commitments of concentration camp labor for I. G. Auschwitz.<sup>4</sup>

4. A few days later, it was Duerrfeld who obtained a promise from the Commandant of the Auschwitz concentration camp for the delivery of 700 concentration camp inmates, and the further promise that the Head Office of the Reichsfuehrung would obtain concentration camp inmates from other concentration camps by transfer to Auschwitz.<sup>5</sup>

5. The Farben Construction Management asked for a thousand unskilled and skilled workers for the first year of the construction of I. G. Auschwitz from the concentration camp and set as an estimate for the second year the requirement for 3,000 concentration camp inmates.<sup>6</sup>

1. BE Brief on Fundamental Questions of Law, by Dr. Wahl, p. 61.

2. PEs 1417 and 2199

3. PE 1422.

4. PE 2349.

5. PE 1426.

6. PE 2200.



6. When SS Obergruppenfuhrer Pohl visited I.G. Auschwitz, it was Ambros who complained of his labor difficulties and elicited from Pohl a promise to allocate inmates to the Monowitz concentration camp, and to supply additional inmates from all other German concentration camps.

7. It was Ambros who procured concentration camp inmates for the building of Falkenhagen and for the construction firm of Luranil, which was 100% owned by Farben, and managed by Ambros.

8. It was Ambros who contacted SS-Obergruppenfuhrer Pohl to get concentration camp labor for Gendorf.

9. Ambros was not under duress or coercion when he wrote to ter Meer stating that "our new friendship with the SS is proving very profitable".

10. On 24 March 1943, the minutes of the 23rd Farben construction conference reveal, under the heading "Employment of Prisoners", that:

It was arranged with Obergruppenfuhrer Schmitt, acting as deputy for Obergruppenfuhrer Pohl, that by 1 June the number will be raised to 5,000 and later on to 6,000.

11. On 9 September 1943, the minutes of the 25th Farben construction conference reveal that:

There are 6,500 prisoners in the camp of whom 5,400 were actually employed.... An increase of staff is hampered by the difficulty of finding accommodation.

12. On 10 December 1943, the minutes of the 26th Farben construction conference reveal that:

It is endeavored to obtain 7,200 prisoners (inmates) for employment. Prisoners are also being employed in the branch building sites of Guenthergrube and Jenina.

13. There is not a scintilla of evidence that any of the members of the Farben Vorstand were laboring under fear or duress when they approved the credits for the Farben Auschwitz construction project, after receiving reports from ter Meer, Ambros, and others at meetings of the Vorstand and at various committee meetings.

14. After two years of Farben experience in Auschwitz, Farben wrote

directly to Himmler in July 1943 urging that the same "method" of solving the labor problem be used in other localities. In this letter he stated that he was:

particularly pleased to hear that during this discussion you hinted that you may possibly aid the expansion of another synthetic factory.... in a similar way as was done at Auschwitz by making available inmates of your camps if necessary. I have also written to Minister Speer to this effect and would be grateful if you would continue sponsoring and aiding us in this matter.

15. In February 1944, Krauch once again gave instructions to follow the Auschwitz example:

In order to overcome the continuous lack of labor, we must establish a large concentration camp as quickly as possible following the example of AZ (Auschwitz)..

This is a small part of the Farben record at Auschwitz - a record so clear that it defies distortion. This is not a record compiled under duress or fear; it is a record of the voluntary acts of those who stand accused.

With your Honors' permission, General Taylor will conclude.

GENERAL TAYLOR: In summary, may it please the Tribunal, if there are any doubts or hesitations about the outcome of this trial, they can hardly arise from the matters we have just discussed. These men may tell us that they did not understand what they themselves were doing, or that they acted under stress of fear, but the record speaks for itself. We will not find the real source of uneasiness stated in any of the headings of the many and able briefs which defense counsel have filed, for the most soul searching doubts are those which arise in one's own mind, conjured up by events in the world around us. In the last analysis, the question in this case is whether we have faith in the intrinsic validity and practical efficacy of international law in this day and age.

I mean it as no criticism of defense counsel that this fundamental doubt has been carefully nourished by them, particularly during the past week. But it is an easy step from the doctrine of "too soon" and "too late" to a desperate if not cynical conclusion that the world is a ruthless and immoral pasture in which the wolves fare better than the sheep. What are

the forces today which awaken these doubts, and are they truly doubts or are they mistaken fears?

Once again, Mr. Stimson has divined one of the most basic causes of our hesitancy. He writes:

What happened before World War II was that we lacked the courage to enforce the authoritative decision of the international world. We agreed with the Kellogg Pact that aggressive war must end. We renounced it, and we condemned those who might use it. But it was a moral condemnation only. We thus did not reach the second half of the question: What will we do to an aggressor when we catch him? If we had reached it, we should easily have found the right answer. But that answer escaped us, for it implied a duty to catch the criminal, and such a chase meant war. It was the Nazi confidence that we would never chase and catch them, and not a misunderstanding of our opinion of them, that led them to commit their crimes. Our offense was thus that of the man who passed by on the other side.

In this passage Mr. Stimson is speaking of pre-war times, but the parallels to the present day are only too easily perceived. During the three years that have passed since the end of the war in Europe, mankind has not crossed over the Jordan. Small but terrible wars rage in Greece and Palestine, the light of democracy and freedom flickers ever more feebly in other lands, and the chorus of international voices is discordant. In our country, the fear of war has been revived by these disturbances and we are constrained to look once more to our own defenses. There is talk of "cold war", and meanwhile men and women die in real wars, and the echoes of persecutions and atrocities will not be stilled. Is it small wonder that some are moved to ask, "Is there a law, and if so where is it?"

Murky and disheartening as these circumstances are, they represent, if your Honors please, the shortcomings of the police force, but not of the law. In legal perspective, this is an old, old story. The King's Peace is not easily established. In ancient times, through many a century, the robber baron sallied forth from his castle to rob and kill the wayfarer,



and toyed with the lives and happiness of the serfs on his manor, and died unpunished in his bed. No doubt, on many occasions not only judges and clerks, but tradesmen and peasants were moved to cry that there is no law, and many a defendant smarted because others, perhaps more powerful, sinned with impunity. The very steps that our own country is taking today to see that its army does not grow rusty are dictated by parallel considerations, and find their most fundamental moral justification in that it is their purpose to fend off, not to conquer. Despite the restlessness of the times, no voice is raised today in defense of conquest, and no voice is heard to say that aggression is not a crime. There is no longer any real doubt about the law against aggression, any more than there was doubt about the law against murder or robbery in Bracton's time. The judges in Bracton's day may often have seen the King's Peace set at naught, but we can well be thankful that they did not despair and reject the very law that gave men hope of future peace and security.

Your Honors, if the complexion of world affairs has darkened since the inauguration of this court room, and if the shadows have lengthened during the course of this very trial, in the long run the law may thrive best on what now appear to be obstacles to its universal enforcement. I am sure that all of us in the court room want to see this torn land once again "ready to bloom and grow fruits", as Dr. Silcher put it yesterday but we do not want to reap another harvest of dragons' teeth. Nor can a healthful and peaceful European community be restored by drawing a shroud over the dead without benefit of inquest. So solemn as is the obligation that the defendants be given every benefit of a full and fair trial, equally solemn is the obligation to the millions in whose behalf these charges are brought that they be given the protection of law and order in a war-torn world.

We thank your Honors.

THE PRESIDENT: Is that all, Gentlemen of the Prosecution?

Then the record may show that the arguments of counsel for the prosecution has been concluded. Then the Tribunal recesses today it will be until nine o'clock tomorrow morning at which time we will hear counsel for the defense for a maximum of three hours of rebuttal argument.

Counsel for the defendants have requested a conference with their clients here in the courtroom immediately after adjournment. The marshal will take note that this request has been granted and he will also promptly clear the courtroom of all other persons.

The Tribunal is now in recess until tomorrow morning.

(The Tribunal adjourned until 0900 hours, 11 June 1945.)

11 June 1948 - 1-1-1-Primeau (Int. Katz)  
Court VI - Case VI

Official Transcript of the American Military Tribunal  
in the matter of the United States of America against  
Carl Krauch, et al, defendants, sitting at Nurnberg,  
Germany, on 11 June 1948, 0900; Justice Shake presiding.

THE MARSHAL: The Honorable, the Judges of Military Tribunal  
VI.

Military Tribunal VI is now in session. God save the United  
States of America and this Honorable Tribunal. There will be  
order in the court.

THE PRESIDENT: Make your report, Mr. Marshal.

THE MARSHAL: May it please your Honors, all the defendants  
are present in the court.

THE PRESIDENT: Gnetleren, this morning's session will be  
devoted to the rebuttal arguments of counsel for the defense. Now,  
there are two practical problems which confront us. The first is  
that, as we understand, these arguments will in the main be  
extemporaneous which makes it necessary for you to exercise some care  
with respect to the speed with which you operate on account of trans-  
lation problems.

The second is that counsel for the defense have agreed upon  
a division of their time and the Tribunal has undertaken the responsibil-  
ity of calling the time when the allotted period has expired. We  
will do that by use of the gavel. I assume that the counsel that  
speak already know the time that has been allotted to them.

The first argument that we shall hear will be from Dr.  
Boettcher who has seven and a half minutes under the agreement.

DR. BOETTCHER: Your Honors, the defense has divided up the  
answers to the final plea of the prosecution in such a way that first  
those defense counsel will speak who are going to make individual  
statements on behalf of their clients. In connection therewith  
a few speakers from our staff will then deal with a number of several  
subjects touching upon all the defendants.

I will speak first on behalf of Dr. Krauch.



On pages 36, 47, 64, 65 and 90 of the German text of the final plea of the prosecution, the prosecution contends that the initiative with regard to the well known Goering Order, dated 18 February 1941, which was prosecution's Exhibit 1417, emanated from Dr. Krauch. It is even contended that Krauch had persuaded Goering to issue this order. For such an initiative on the part of Krauch the prosecution documents offer no proof at all. Moreover, this evidence completely evades the presentation of the defense. By the testimony of the witnesses Goernert and Schieber the defense has proven that this order in regard to its reference to the employment of concentration camp inmates was not initiated by Krauch nor by any other defendant but, on the contrary, it was issued against Krauch's own will. The witness Goernert described unequivocally what efforts Krauch made to have voluntary workers committed for Auschwitz.

2. In this connection, by making an attempt to show that Krauch displayed initiative for the commitment of concentration camp inmates the prosecution cited two letters which Krauch wrote to Kehrl and to Himmler. These are prosecution Exhibits 477 on page 37 of the final plea of the prosecution and Exhibit 1526 on page 92 of the final plea of the prosecution. Without taking into consideration the circumstances under which they were drafted, they are all put into certain light or tendency and, therefore, they are citations or quotations giving the wrong picture. They are legally irrelevant, but their use by the prosecution makes it necessary for me to make a general statement.

In this room the words have been frequently quoted: "Documents speak for themselves. This concept, your Honors, is only conditionally correct just as all human acts, letters, too, and file notes can only be evaluated if the circumstances, the meaning and purpose, are taken into account under and for which they were made or drafted. This applies particularly for technical men who, unlike the judge or the lawyer, have the custom of polishing the style of their statement and

already valid for the human language generally, that it namely is very frequently unclear and vague and this becomes even more manifest if the necessity of a translation is present. Therefore, we must rely on a sort of speech that is radiated which can be heard underneath the spoken or the written word and which is sometimes more effective than what we actually say. The type of procedure under this Tribunal justifies the hope that this invisible or inaudible language will be interpreted by a capable person who sometimes will have to complete the inadequate word or the inadequate written word to give its true meaning. Under this aspect both of the letters that the prosecution cites must be understood as having a certain tendency. One of these letters prosecution Exhibit 477, is part of those actions which were necessary in the Third Reich when the popular reproach was made that one was not taking sufficient interest in the total war effort. The letter is an answer to such a charge and thus an act of defense towards the superior agency of Kehrl.

Prosecution's Exhibit 1526, too, a letter of Krauch to Himmler, contains no approach on the part of Krauch to the latter who was at the time at the climax of his power as the leader of the SS, but it expresses an opinion about the negotiation for the production of rubber from plants in which a co-worker of Krauch, Dr. Eckell, had to take part. In this negotiation Himmler, and not Krauch's associate, had offered to make available concentration camp inmates for the construction of the fifth Buna plant and Krauch's associate who drafted the letter considered it necessary and proper to point out to Himmler the advantages of the Buna production, as compared with the production of rubber from plants and also to touch upon the question of making available workers under the aspect of this particular question.

If one takes into account that this fifth Buna plant was never projected and certainly never built, then one can see the legal irrelevancy of this document immediately and if one recollects further the general attitude of Krauch in regard to the employment of concentration camp inmates then one can see how irrelevant this is even concerning the atmosphere.

On behalf of the defense counsel of Dr. Gattineau, Dr. Aschenauer, I have to make one correction as to facts. In the summation of the prosecution, Dr. Gattineau has been mentioned in two places with reference to the negotiations with Hitler in November 1932. Dr. Aschenauer takes the liberty of pointing out that the presentation of the prosecution is in contradiction to the documents which have been submitted and in contradiction to the statements which Dr. Aschenauer made in his closing brief and in the summation.

On behalf of Dr. von Metzler, I have been commissioned to speak for Dr. Gajewski and to clarify one matter of fact. On page 77 of the summation of the prosecution it is contended in connection with its statements about the so-called "window dressing", that a document, Exhibit 1947 was submitted to the defendant Gajewski from which it allegedly could be seen that he had given the reason for the construction of the new film plants, that its main purpose was to enable the air force, Luftwaffe, to meet its main purpose was to enable the air force, Luftwaffe, to meet its requirements made by the Aviation Ministry; but from the document itself it can be seen that this is only one of three reasons and the defense has proven that a production of aerial film was not intended nor was it ever carried out.

On page 79-80, the case of Dr. Ollendorf is again touched upon, as though Gajewski had given the instigation for Ollendorf's arrest and confinement in a concentration camp. As can be seen from Exhibit 1957 -and as can be seen quite clearly from the passage which was



quoted is incorrect.

Just one more minute, Mr. President. On page 24 of the prosecution brings a quotation about the so-called new order in which the new expansion of the French photographic industry is to be prevented according to a desire of Farben, as far as the demand could be met by German production capacity. It has been pointed out that the evidence has neither shown that such a program was carried out nor that the defendant Gajewski instigated or approved such a conduct.

THE PRESIDENT: Dr. Rudolf Dix; seven and one and an half minutes.

DR. DIX: At first, I am making an announcement on behalf of the defense for the record. May I inform the Tribunal that, in agreement with Mr. Sprecher, I handed to the secretary general a few days ago a further correction of the record; and please don't subtract this quarter of a minute from my total time.

THE PRESIDENT: I think we have enough time, Doctor, to say that we shall approve that stipulation by a specific order and save our time here.

DR. DIX: Thank you.

Now, on behalf of Geheimrat Schmitz. In my subject matter too, the prosecution has repeatedly violated the sacred character of a stated and established fact. I shall mention only one case and refer for the rest to the presentation of the established facts in our closing brief.

On page 78 of the German text of the final summation of the prosecution, the prosecution, in the evident intention to turn the repeated efforts of my client for the Jews persecuted by Nazis into the opposite and thus to impeach my client of having told lies; describes the background, as they call it, for the payment of the contribution of 100,000 Reichsmarks annually from 1942 on for the orphans

and the widows of the SS members killed in action in such a way as is not in agreement with the facts presented by us and which erroneously reproduces our presentation of the facts.

The prosecution tries to create the impression as though our presentation to the effect that one of the motives of Schmitz for making this contribution was his worry for the future fate of the brothers Weinberg, and they say that this was not conclusive and untrue, by pointing out that the confinement of Geheimrat von Weinberg was carried out only 6 months after the first contribution was made and tries to make it appear that we said that this contribution served the purpose of liberating Geheimrat von Weinberg who had already been arrested.

To refute this I point to the fact that the date of Weinberg's arrest can be seen from the affidavit of Count Spreti, that we introduced into evidence and which was not "brought to light" during the cross examination of Count Spreti, as the prosecution thinks it proper to point out, and that our own presentation of the evidence was always to the effect that Schmitz acted only because he was concerned about the future fate of the brothers Weinberg and he, therefore, attached importance not to hurt or to provoke the SS by refusing to make this contribution.

For the rest the prosecution also deliberately does not say that the defendant Krauch, many weeks before the cross examination of Count Spreti, immediately) and still in his direct examination corrected the mistake that he had made previously.

It is furthermore misleading if these contributions for the widows and orphans of the Waffen SS are called payments for the "notorious Hitler Circle" and, moreover, as brought into some connection with the allocation of concentration camp inmates in Auschwitz.

In regard to the details about this affair, I refer to our closing

brief on page 1149 and the following pages. In other words, my argument refers to an incorrect statement of fact.

THE PRESIDENT: Dr. Berndt; five minutes.

DR. BERNDT: Your Honors, I have to make five actual corrections and one remark. First, on page 11 of their summation the prosecution contend that Farben had concluded a contract with the German authorities about the construction of the large Buna plant at Schkopau, in April-May 1936. The prosecution connects this with a meeting of the Goering staff, about the preparation of a war. This conclusion is wrong because the contract about Schkopau was concluded only in August or September 1937, as prosecution's Exhibit 550 indicates.

Secondly, the prosecution states on page 11 that the so-called bible of the 4-year plan had been approved in May 1937 by Farben. This contention, too, is incorrect. This bible was never approved by Farben and Dr. ter Meer made the acquaintance of this bible only here in Nurnberg.

Thirdly, the prosecution, on page 22-23, described the dismantling of machinery equipment of the Polish factory Debica and its transportation to Leverkusen. The prosecution did not offer any exhibit or any evidence in that regard and did not mention this affair in the indictment nor in the closing brief. Therefore, the defense did not go into this affair. For clarification I refer to Kushe's statement that the machinery of Debica was and remained the property of the Wehrmacht and was never acquired or bought by Farben.

Fourthly, the prosecution contends on page 26 that a connection of the army and Farben had existed, about the fact that "the entire staff of the Francolor plants amounting to 2500 employees and workers were to be committed for German production." The prosecution's evidence has clearly shown that the production of Francolor predominantly remained in France and that in 1942 only 13 per-



and in 1943 only 18 percent of Francolor's production was taken to Germany. This is Ter Meer Exhibit 279.

I will now turn to my fifth point. On page 87 of the prosecution contends that they had read certain notes which were made about the meeting of the defendants ter Meer and Kuehne with General Kesselring. The prosecution did not offer any document about this alleged fact.

One more remark; the prosecution said again yesterday that the defendants had expected a war of aggression. This is incorrect and the following ten facts will show it.

First, in a nitrogen discussion which took place on the 25th of August 1939-- that is six days before the war broke out -- a five-year plan for the production of nitrogen was drawn up.

Secondly, on the 19th of July 1939, a resolution of the Pharmaceutical Main Committee about the taking up of the pharmaceutical production in France was adopted.

(c) Farben again, before the war broke out started to create their own production site in Rouen in France for textile auxiliaries.

(d) the Expansion of the factory founded in Trafford Park near Manchester jointly by the ICI and Farben on the 1st of April, 1938, was continued until the last days of August, 1939.

(e) The attempts with Buna tires in the United States were continued until the war broke out. The buna tire expert of Farben was to start his second trip to the United States in the middle of August, 1939. Tor Meer announced this to Howard in writing, and indicated that he would arrive in the autumn of 1939. Dr. von Knieriem and Ambros were to accompany tor Meer.

(f) In the years 1938 and later, 16 license agreements were concluded with United States firms. Amongst them was a license agreement about the production of phosphorus, a strategically important product.

(g) In the years 1938 to 1939 the Nitrogen Syndicate supplied 31,904 tons of ammonium nitrate to ICI.

(h) In the TEA in the meeting 7 August, 1939, approximately 70 million Reichsmarks were appropriated for the construction of a color film and color photograph paper factory in Landsberg.

(i) On the 26th of May, 1939, Dr. Ambros made a speech in Paris about Buna before French shareholders.

(k) In August, 1939, two chemists of an American Chemical factory were given permission to inspect the Farben plants in Hoechst, the plants of Metallgesellschaft and Degussa.

These, Your Honors, are all proven facts for which I have given one piece of evidence each. Do you then believe the technical men, tor Meer and the other technical men had expected a war, and do you believe that tor Meer expected a victorious end of the war? The same tor Meer who stated to the Army Ordnance Office in Berlin

in the matter after the war had broken out that the United States would easily be able to produce ten times as much as the armament approved by Berlin. In my opinion, these technical men did not expect or count on a war nor could they believe, in their capacity and technical experience, that Germany would be victorious in a war.

THE PRESIDENT: Dr. Schubert, 7½ minutes.

DR. SCHUBERT, (counsel for the defendant, Buergin): Mr. President, my colleague, Hoffmann, asked me to precede him. He will take the floor later.

Your Honors, in regard to the defendant Dr. Buergin too, the Prosecution made a number of statements of facts in their final summation yesterday which are incorrect and that I am going to correct as follows:

First, the case of Hlyzin in Poland, Prosecution Exhibit 1168, is called by the Prosecution, "a case of open plunder by dismantling". On page 22; in connection with the summation, one must assume that the Prosecution means plunder by Farben when they say "open spoliation or plunder". The Prosecution document does not give the smallest indication for this, because from it, it can only be seen that Farben Ritterfold was assigned Hlyzin machinery from in Poland, by the NOKW, the High Command of the Armed Forces and that they accounted for this machinery.

The other circumstances of this event are completely unclarified. Any participation of Farben in this dismantling has not been proven.

Secondly, the trip to Poland of Buergin that I mentioned in my final plea, Prosecution Exhibit 1967, is treated repeatedly in the final summation on pages 23, 27 and 60, of the Prosecution. Buergin is said to have made far-reaching and extensive suggestions for the dismantling of chemical plants in Poland. If one considers this document, then one can see only that Buergin said to an official



of the Reich Ministry of Economics that only a few machines and containers were of interest for German industry.

The document does not give any indication that the plants were to be dismantled and machines to be taken to Germany, but one can even less see from it that something like this was actually carried out, which is the absolutely necessary foundation of any conviction that Your Honors might find.

Thirdly, the Prosecution tries to deny that in the field of procurement of labor, the defendants should at least be given the mitigating circumstances of the emergency in which they were. In that connection the Prosecution refers to Prosecution's Exhibit 1964 of which the Prosecution contends that it was written by the Defendant Buergin: page 35. The document shows that this was a petition of the staff of Bitterfeld to the director, and that it was thus sent also to Buergin. Buergin is not the author, but the recipient of this document.

The contents of the document confirm the points of view of the Defense in regard to the state of emergency. From this one can see the great worry of the Plant management to the effect that as a result of inadequate assignment of workers they might be able to meet their production quota. There is not a single word in this document about foreign workers.

In regard to the scarcity of workers, the Department of the Staff recommends reticence in regard to granting furloughs, something which every worker had to put up with in Germany at the time. This caused Buergin to make this remark on the document which was so much taken amiss by the Prosecution, "French workers who want furloughs must bring guaranty or must furnish bail", "Private agreement with slave-dealer".

In this remark there are two separate suggestions. On the one hand the making available of guarantors in the case of granting fur-

loughs, to foreigners which was ordered by the government, but actually never carried out; and then the agreement with the assembly firms about making available loaned workers, as is shown by my document. Such firms existed already before the war too.

The Prosecution does not mention when quoting this remark of Buegins's that in the re-direct examination, page 8473 of the Transcript, he said that when he called the assembly firms "slave traders" he was only using an ironical expression, and when I asked him whether he considered the workers of these assembly firms as "involuntary" workers, he answered the following: "That really has nothing to do with the question; only the circumstances that somebody is profiting from the work of another without working himself; -- that is what I mean."

Fourthly, on page 57 of the Prosecution's plea, the Prosecution Exhibit 578 is mentioned on the basis of which the Prosecution contend that the defendants ter Meer and Kuehne had had a meeting with General Kesselring. Actually this was a meeting in which General Kesselring and on behalf of Farben, Dr. Pistor the predecessor of my client in Bitterfeld, participated.

The file note about this meeting, Pistor sent to the defendants ter Meer and Kuehne, who did not participate in this meeting.

I must object also to the description of the contents of this file note by the Prosecution. The Prosecution wants to conclude from it that Farben took an initiative in the rearmament, and wants to deny that the Government exerted any pressure. Dr. Pistor did not advocate, as the Prosecution contends, that Farben be granted a major share in the production of electron metal, but only advocated that it should be made possible for the capacity of the new Magnesium works at Alton II, which was constructed in Stassfurt, to be exploited by Farben, after this Plant was to be built at the express suggestion

and instigation of the Reich Aviation Ministry as can be seen quite clearly from Prosecution's Exhibit 574, page 2.

May I remark that Dr. Flaechsmeyer, who is going to follow me, is not going to take the time allotted to him and that he has permitted me to use part of his time?

Dr. Buergin was not responsible for magnesium in 1935, the time when this file note was made. Further details to be found in my trial brief.

Fifth, on page 88 of the Prosecution's summation, Buergin is erroneously mentioned in connection with an oxygen plant in Alsace-Lorraine; during the presentation yesterday, the Prosecution already corrected the fact that Buergin had nothing to do with this affair.

Sixth, One absolutely incorrect statement is contained on page 89 of the Prosecution's statement about the Norwegian question. According to this statement Krauch and Buergin did not only recommend, but actually achieved Farben's participation in the exploitation of Norwegian industrial plants, for the German Air Force. In that connection the Prosecution refers to their Exhibit 585. This Prosecution Exhibit is a file note of Dr. Moschel about a conference with Krauch. Buergin is not mentioned a single time in this entire file note. This note deals with the far-reaching aluminum plants of Kuppenberg, which were never realized, and never realized by any participation of Farben. As can be seen from the file note, Norwegian industrial plants were not to be exploited or wronged, but new Norwegian plants were to be built with German funds.

It was not intended to dominate the Norwegian water power, because such water power and water works as required by the project were not even present, and had to be built.

THE PRESIDENT: Dr. Hoffmann, you have 25 minutes.

DR. HOFFMANN: Yes, Your Honor. It is too much.



DR. HOFFMANN: (Counsel for defendant Ambros):

Your Honors, what I had to say on behalf of Otto Ambros I have already stated in my Final Plea. What I am now going to say is mainly intended to corroborate those points of view that I have explained to you in my final plea. Contrary to my statements, the Prosecution stated in their final plea that in his capacity as Technical Adviser, Ambros did not operate the plants there in order to give their daily bread to the French workers, but in order to serve the German war machine.

They submitted documents during cross examination in which Ambros referred to these points which I admit, but as I emphasized, and as Ambros also emphasized in the witness box, he did that in order to create the necessary prerequisites to start production of these plant, that is to receive the necessary allotments of iron and coal. In order to refute the Prosecutions point of view, may I corroborate and support what Ambros said and what I stated in my final pleas, by pointing out that from the documents one can see that only five percent of the entire French dyestuffs factories' productions were produced for possible use of the Wehrmacht, and that from the other 95 per cent, that were produced, the overwhelming part of the production was permitted to stay in France.

I did not go into one subject matter in my Final Plea. That was the question of the foundation of the Kautschuk Ost GmbH and of the commitment of Chemical experts in Russia for taking over the Buna Plants. The Prosecution concerned itself with this question, and therefore, I, too, must go into this question.

The basis for the fact that Ambros named chemists to be appointed for work in Russia, was because of an express letter of the Reich Ministry of Economics, that I submitted in my Document OA 139, Exhibit 207, for Ambros. Today, Your Honors, we know from documents that were published here for the first time during the IMT trial, that Goering

and his entourage, and Hitler especially were the initiators for the enslavement of the vanquished Russian people, but we also know that those documents were drafted during secret sessions, and that nothing penetrated to the public about these secret meetings, for otherwise it would not have been possible for the author of this letter directed to Ambros, a certain Dr. Malert from the Reich Ministry of Economics, to make this demand of Ambros on the 30th of June, 1941, for the naming of chemists for Russian Buna factories. He gives the reason for this as being, "the chemists are needed for the organization of a capable administration, and for the operating of a number of plants to be constructed in the Russian area and which would be essential for the German chemical industry."

These reasons, which the author of this letter gives, were acceptable for Ambros, and he then named chemists, upon state request who were to concern themselves with operating Russian plants; and that he does that a few days after the war broke out with Russia, is the only thing that the Prosecution can charge against Ambros on this point, unless they also want to cite that at a later time, legal drafts were also prepared as to the manner in which one could take over Russian Buna plants, - but this was never actually done. In this connection, however, I must say that they were only legal drafts of contracts that had nothing to do with the chemists Dr. Ambros.

I must point out one more thing. This is in connection with the letter that Ambros wrote to ter Meer about his experiences in the concentration camp, Auschwitz, and where he speaks about the new friendship with the SS, and which was to have a beneficial effect, and not a profitable one.

In my final plea I pointed out that when he drafted this letter, Ambros was under the impression of a previously conducted inspection of the concentration camp and that he did not know those things that

he knows today. Under this false impression, he wrote this letter, so-to-speak, as a situation report at the time.

That does not mean that he was informed about the inhuman treatment accorded the prisoners in the camp, about the gassings, and what actually happened to the inmates. One can evaluate such a letter only under this aspect, but not under the aspect that the Prosecution wants to attach to it now, that they now presuppose known facts that were not known to Otto Ambros at that time.

This is the general outline of what I want to answer to the Prosecution's charges.

THE PRESIDENT: Dr. Nath, 15 minutes.

DR. NATH (Counsel for Dr. Hans Kuehne): Mr. President, Your Honors, in their Final Plea, the Prosecution attempts to prove that the individual members of the Vorstand, over and beyond their own sphere of responsibility, had knowledge of political events and of the spheres of work of their Vorstand colleagues. This is how the Prosecution tries to support their theory under Count I, "Planning and Preparation for a War of Aggression", and at the time try to construe the collective responsibility of the Vorstand. For this purpose the Prosecution believes that they can refer to my client, Dr. Hans Kuehne, as an example. I can consider this attempt to be hardly anything else but a tactical one. In the course of this trial, which has lasted several months, we have not heard the name "Dr. Hans Kuehne" as frequently as we did during the Final Argument of the Prosecution.

Now if Dr. Hans Kuehne is supposed to be a good example for the responsibility of the Vorstand, then he will never be such an example within the meaning of the Prosecution's theory. I believe that on the basis of the evidence, unequivocal proof has been furnished that the Manager of the Leverkusen Plant, Dr. Hans Kuehne, neither knew anything about the planning or preparation of a war aggression nor



had he any knowledge which might serve as a basis for this responsibility, under Counts II and III.

Unfortunately, we regret to say that the Prosecution entirely disregards the presentation of the evidence by the Defense, and that they have repeated in their Final Argument, the same statements, with all of the errors, - and even typographical mistakes, - which they made at the beginning of the trial. If the Prosecution had cared to glance even superficially at the documents of the Defense, I would not be compelled to repeat this statement once more.

In the first place, I refer to my closing brief in which all items that the Prosecution charges against Dr. Kuehne have been discussed and rebutted. With this I could close my statement now. However I cannot permit that the Prosecution developed a completely incorrect picture about my client which is not in agreement with the truth which has been established by our case-in-chief, and that they now all of a sudden and for the first time, want to attach a significance to Dr. Hans Kuehne, of which the Prosecution did previously not know anything themselves, according to their previous presentation.

Let me start to correct: First, Dr. Kuehne was the Chief of the Plant Combino Niederrhein. That is correct. However, from a legal point of view this actually is without any significance because he was only responsible for his own plant in Leverkusen, and not for the internal occurrences in the other plants of the Combino, which had their own Plant Leaders.

Secondly, on the 21st of April, 1932, Dr. Kuehne held a meeting with his Department Chiefs. In this meeting, the Prosecution contends initial measures were discussed in considerable detail in the field of Air Raid Protection. These, "considerable details" consisted in fact that Dr. Kuehne informed his Department Chiefs of the orders of the Government, and added on his own accord, "and should only do what

the plants can be forced to do".

I refer to Exhibit 170 in Book 7, page 17 of the English.

Thirdly, the Prosecution says that Dr. Kuehne emphasized with pride that Hossfeld, whom he allegedly called a "Gauleiter" had praised the Leverkusen plant. Let us correct once again: Hossfeld was not a Gauleiter, but an ordinary official of the German Labor Front, that is a Gauamtsleiter, and as such responsible only for the social section, Strength through Joy.

However, Kuehne was not only praised, but also reproached. In our opinion it is of no consequence whatsoever, what the German Labor Front said in 1933 and '34. Hossfeld was only concerned with cultural matters of the plant. We cannot see what this might have to do with the preparation of an aggressive war.

Fourthly, about the development work of Buna at Leverkusen, I have nothing further to say. All of the necessary details have already been presented in some length by Dr. ter Meer.

Fifthly, even though Dr. Kuehne took part in the first discussion concerning synthetic oil in Ludwigshafen, in January, 1935, on which occasion the foundation of the Brabag was discussed, this document does not show anything concerning the knowledge of an aggressive war.

Sixthly, the alleged stockpiling of pyrites, in which my client is said to have played an outstanding part, has been proved by us to be an absolutely normal business transaction.

Seventh, the Prosecution in their Final Argument quote a letter of Dr. Kuehne addressed to Dr. Krauch, in which he made suggestions concerning the staffing in Krauch's office which, it is the Prosecution's contention, were at the same time in the interests of Farben. It is true and has been proven that the very contrary happened. Dr. Kuehne did not suggest a man from Farben, but somebody from a competitor firm.

Eighth, a particularly false assertion is also the assertion that toward the end of 1937, experiments had been conducted in Leverkusen, with a substance which was later known as the poison gas, Tabun.

It has been shown in the evidence that in Leverkusen work was done only on an insecticide which turned out to be highly poisonous when it was examined more closely in the Elberfeld laboratory.



This case has been cleared up beyond any doubt by my colleague, Dr. Nelte, particularly during the cross-examination of the Prosecution witness Dr. Schröder. It is a fact, accordingly, that at no time were experiments carried out with a poison gas "Tabun" at Leverkusen.

Ninethly, the inadequacy of the Prosecution's line of proof is particularly shown by the fact that they again quote an article which I explicitly dealt with and which was not written by Dr. Kuehne but by his management assistant, and which my client was apparently unfortunate enough to have signed, as he says today. No unbiased reader of this article can derive any knowledge about an impending aggressive war from it.

Tenthly, the Prosecution claims that Dr. Kuehne played an essential part in the expansion of Farben interests in Austria, in the adjustment of the Austrian economy to the aims of the Four Year Plan and Germany's rearmament. The Prosecution has not indicated what the planned acquisition of the Skoda-Wetzlar shares, which had been discussed for many years and in which Dr. Kuehne did not participate, has to do with the preparation and planning of an aggressive war. Its presentation, as far as it can be supposed to relate to Count Two, is irrelevant because this matter was excluded from this trial because of the decision rendered by the court. The statement concerning the compensation received by the Jewish employees at Donsuchemie A.G. is objectively incorrect. On the contrary, as has been proven, Dr. Kuehne was very generous, above and beyond the legal provisions. Concerning the mobilization plans for Donsuchemie A.G. the Defense made the necessary corrections in their closing briefs.

Eleventh; in October, 1941, on the occasion of the birthday celebration of the industrialist Poensgen, Dr. Kuehne, by chance, happened to meet Funk, then Minister of Economics. Funk told Kuehne: "Without Farben and its achievements, it would not have been possible to wage this war." The Prosecution immediately believes to have literal proof for aggressive intentions of Farben. I want to ask Your Honors: What are we supposed to do about an argument like this in which such remarks of politeness by

a minister on a social occasion are to be taken seriously, or, even more, are to have probative value?

Twelfth; The assertion that Dr. Kuehne drafted plans for taking over the Aussig Falkenau plant in the Sudetenland is not only erroneous but also irrelevant for the same reasons I have given for the case of Austria.

Thirteenth; the Prosecution believes that they can quote a minutes of a few Vorstand meetings or meetings of the Commercial Committee or Technical Committee in which my client took part. In this case I should think abundant proof has been furnished to the effect that the individual Vorstand member who had nothing to do with the actual events could see no indication of an incorrect or unfair business policy from these reports. The Prosecution was not able to prove in a single instance from the documents they quoted that my client, Dr. Kuehne, could have as much as one occasion for misgivings. In this case too, as happened frequently, the Prosecution deliberately evaded giving any details concerning their charges in their final argument.

Fourteenth; in regard to Count Three also, the Prosecution repeat their own assertions, which have long since been disproved, dealing with the employment of foreign workers. We cannot take the responsibility of overloading the record with a repetition of our case-in-chief and we only want to correct briefly the following points. In their final plea, the Prosecution quote the minutes of a meeting of the Employers' Advisory Council dated 11 March. In this quotation a difference is made between foreign and conscripted labor. The term "conscripted labor" of course relates to German workers because otherwise it would not make any sense to mention the term in juxtaposition to foreign workers. At any rate, no inference can be drawn from this as to Dr. Kuehne's knowledge about the employment of conscripted foreign workers. They furthermore quote a report dated June, 1943, according to which Leverkusen informed the labor authorities that the failure of the other authorities would have resulted in an unpleasant situation, if the factory had not taken the

initiative in the procurement of foreign labor. This initiative was the recruitment of voluntary workers, hence, it is the very opposite of what the Prosecution can assert. They refer to the fact that in August, 1944, the Leverkusen plant still requested the allocation of Eastern workers. In August, 1944, Dr. Kuehne had ceased to be the manager of the Leverkusen plant for one year already. The charges, therefore, are absolutely irrelevant. We have proven that the provisions concerning restriction of leave for Polish workers were de facto not followed by the plant management in Leverkusen. The fact that Dr. Kuehne said in January, 1942, that the number of foreign workers had to be increased does not prove that they wanted compulsory labor. This only shows that the production quota which the government had imposed on the plant could only be met by an increase in the number of workers. He, therefore, did not of his own initiative take any steps for the procurement of compulsory labor but rather made met an exigency which had been created by the government.

It is not true that Dr. Kuehne made an effort to attain additional production for which he then would have needed more workers.

Fifteenth; the Prosecution in another portion of their final arguments finally assert that Dr. Kuehne and Dr. ter Meer met General Kesselring; on the occasion of this get-together, they say, both gentlemen emphatically insisted in obtaining an increased proportion of the electrom production for the Luftwaffe. Exhibit 578, however, shows quite clearly that neither Dr. Kuehne nor Dr. ter Meer met General Kesselring. Up to the present time and today Dr. Kuehne has not known and does not know the former Field Marshal Kesselring personally.

Your Honors, I cannot deal with further details of the final argument. Otherwise I would have to repeat my entire case-in-chief. It was my concern in these few minutes to prove how misleading the argumentation of the Prosecution is. Not only have we disproved every item of the Prosecution's assertions in our case-in-chief, but we have furthermore shown that, particularly as regards Dr. Hans Kuehne, none of the charges



pertaining to any counts of the indictment can be maintained. For the purposes of the Prosecution, therefore, he can only serve as a very poor example. He is, however, a good example for the thesis set forth by the Defense that the decentralized business management of Farben makes a collective responsibility of the Vorstand impossible. Particularly Dr. Hans Kuehne is not guilty of any charge contained in any counts of the indictment.

THE PRESIDENT: Dr. Seidl, you have got seven and a half minutes.

DR. SEIDL (Counsel for the defendant Duerrfeld): Mr. President, Your Honors. In our case-in-chief and in our presentation of the evidence and in our final plea we tried to give a picture of the conditions to the Tribunal as they actually existed in the Auschwitz plant of Farben. Then, in our closing brief containing 184 pages we have given factual and legal aspects of the result of the evidence. In the final plea of the Prosecution there is not a single point about which we have not already taken a stand, factually and legally. I want to comment only on one document briefly, which the Prosecution quoted in their final argument. This is Exhibit No. 1497, a letter which a subordinate employee in the Farben plant of Auschwitz sent to a director in Frankfurt whom he knew. I want to mention only incidentally that the defendant Dr. Duerrfeld, whom I represent, was not at that time in Auschwitz but in Louna. However, in regard to the probative value of this letter, one must mention the fact first that the letter was written in June, 1942, at a time when the inmates were guarded by SS men within the plant of Farben. The Tribunal will remember that from 1943 on, from the spring of 1943 on, this changed, and that from that point onwards the guards were stationed outside the plant fence. But for another reason too it would be completely erroneous to attach any probative value to this private letter, if perhaps the Prosecution tries now to make any conclusion about the state of mind of the plant management, at the time when this private letter was written by a subordinate employee. I think we have stated to the Tribunal frequently enough what state of mind the plant management had actually at the various

times, and what motives were the causes for their various actions. In regard to the case of Dr. Duerrfeld, I have nothing to add to my final plea. We submitted more than 400 affidavits altogether. We submitted various contemporaneous documents. The defendant Duerrfeld himself testified over a period of some days on the witness stand. The Prosecution did not make the slightest attempt even to shake his evidence in any respect whatsoever, on the contrary, the Prosecution waived cross-examination.

The Prosecution then submitted a few rebuttal documents, we must say "so-called" rebuttal documents because the contents of these rebuttal documents was of such a nature that they confirmed to the fullest extent the statements made by Dr. Duerrfeld. Therefore, I did not consider it necessary to object to the admissibility of these so-called rebuttal documents. It is therefore sufficient if I refer here to the statements made in my final plea and to the factual and legal evaluations and conclusions that are contained in our closing brief. That is all I have to say.

THE PRESIDENT: Dr. Wahl, you have ten minutes. You were scheduled after the recess. We can hear you before the recess and conserve that much time, if you are ready.

DR. WAHL (For the Defense): Your Honors, I begin the second part of our replication which deals with the law questions, and I restrict myself to some clarifications which the final plea of the Prosecution made necessary.

Firstly, concerning the question of retroactive penal law: In the legal science we distinguish between statute law and customary law. In correspondence to this the international law distinguishes between the law based upon state treaties as statute law and the principles of law recognized by general and actual use, the so-called customary law.

In common opinion, customary law requires two prerequisites: A proved use or custom and the general conviction that this custom represents law, the so-called "opinio necessitatis." Since the punishment of an aggressive war is not based on treaties providing for such a punishment,

COURT VI CASE VI  
11 Jun 48 ~~5-6-48~~ AEH-Schwab (Katz)

it was necessary to prove a customary law. A factual custom that aggressive wars have been punished, as well as the fact that this punishment corresponded to the general sense of justice.



These two primary requisites exist with respect to the old war Crimes: These have always been punished, and we can leave without consideration the question as to whether -- as some authors suppose -- the real source of the punishableness of the old war crimes is based on the fact that corresponding penal provisions have been attached to the military penal codes of all civilized nations. Since concerning the aggressive war there is no proof of a treaty between states or of proceeding punishments, the Prosecution, together with Stimson, refers to the analogy of the punishment of the first murderer. But this analogy misunderstands completely the differences of nature between the modern law problems and the law phenomena of early history. At that time, of course, there was no division of power between legislation and jurisdiction, a division which since the end of the eighteenth century is prevailing in all civilized nations and has created the principle *nulla poena sine lege*. But this example does not even prove that the first murderer was punished in violation of the principle *nulla poena sine lege*. In this brief final replication I am not able to deal in detail with these complicated questions concerning the origin of criminal law, but I should like to point out that the punishment of the first murderer by a tribunal was only the replacement of the blood feud, of the so-called private wars, the vendetta. And I think of the German history of law, the legislation concerning the so-called public peace, which declared the private war as criminal on certain days or the week and later on, gradually extending this principle of law, in 1495, forbade it absolutely by promulgation of the general public peace. This shows that the elimination of private revenge took place by way of general legal provisions, so that the person breaking the peace was quite aware of the criminal character of his action. It cannot be overlooked, however, that the international law -- if one considers a world wide organization as a climax of its development -- is today still on a very early stage of development, as is shown by the

dogma of the sovereignty which in the last analysis is an anarchical principle. It is, therefore, quite natural to apply parallel comparisons from the early period of the domestic history of law. But this does not mean that the guaranties of law which in the course of history of all civilized nations were created within their domestic sphere, might be eliminated in the international penal proceedings by referring to a primitive state of law which we are proud to have overcome.

Such a solution would contradict existing international law, for this law has to be supplemented by the recognized principles of law of civilized nations. And from that follows that the comparison with the punishment of the first murdered is quite untenable.

I cannot but repeat the sentences of my final plea which show that the law creating functions of the judge are restricted today by the principle *nulla poena sine lege*. I quote:

"... if there is any step in the development of law that requires a perfectly clear attitude as to whether the judge stands by what has been handed down, as is his duty, or whether he creates new law, which in principle should be left to the legislator, it is the introduction of the death sentence for an act for which, at the time of its commission, there was no question of penal sanctions. To use here the parallels of these cases of extensive or restrictive interpretation of an old legal maxim, is, to say the least, an astounding lack of judgment, in which political considerations have more weight than legal impartiality. What sense would remain in the prohibition *ex post facto* law if in extreme cases it could be swept away by such considerations?"

I conclude my remarks on this point by including the quotation from Stimson's article which the prosecution is referring to in its final plea, into the collection of statements on which my argumentation is based. Stimson says, and I quote:

"What happened before the Second World War was that we were lacking

in courage to carry through the important decisions of the League of Nations. By the Kellogg Pact, we agreed that aggressive war had to be stopped. We renounced it and we boycotted those who would use it. But it was only a moral condemnation."

End of quotation.

That is exactly the same what I explained in my remarks concerning Count I.

2.) The prosecution does not give any answer to my remarks concerning count II: That cases of plunder and spoliation as well as the employment of forced labor cannot be punished because the other party, too, by their air raids treated life, health and property of civilians as enemy war potential and therefore was violating the international law, in other words: The prosecution does not take up a position the objection of "tu quoque". It attacks only one consideration which indeed could be attacked, if I had expressed it as my juridic opinion, namely my opinion that the German measures of confiscating factories, in which legal form whatever they appeared, could only damage the proprietors for the duration of the war. I said and I quote:

"There are three possibilities: Either the occupying power which has commandeered the factory wins the war, or it loses it, or the result is a deadlock. If it wins the war, it concludes the peace treaty on the basis of a capitulation and then legalizes its economic measures through the conclusion of peace -- the same applies for the actual peace treaty in the case of a deadlock -- or else it loses the war and the factory naturally returns to the possession of the occupied foreign country." In order to avoid misunderstandings I myself designated in my plea these statements as a more economical consideration; it should only explain in detail the truism that a confiscation of plants is indeed a small encroachment on private property than the destruction of plants by air raids and is insofar completely justified.

3.) I want to add a further remark to the viewpoint dealt with by me



concerning the collision of duties in which the prosecution attacked me insofar as it misses in this respect the proof of the goodwill of the defendants to oppose the system as much as possible. Your Honors, this criticism shows that the prosecution did not yet become familiar with the conditions existing in the total Etat Criminel. I remember how much I was upset as a young man when in a theater performance of Tolstoi's "Living Corpse" I saw for the first time the caves dropper who during a private festival tried to get incriminating material for a denunciation from the speeches of the hero. All of us were surrounded by such creatures and the more so the higher one's rank was. All plants were full of vicious spies; therefore it is very comprehensible that under these circumstances the so-called authentic documents used by the prosecution, indisputably are drawn up in a national socialist sense. At several meetings on questions of the reformation of civil law to which I was invited I myself made statements which later on did not appear in the minutes because they did not correspond to the general line. One of the most terrible consequences of the totalitarian state is the coercion to hypocrisy and the general untruthfulness, caused by it, which with the continuation of war becomes more grotesque because everyone had to fear that he would be exposed to the most cruel punishment for sabotage, defeatism, etc., if he deviated in the least from the official line or admitted any undesirable fact. The Russian emigre literature time and again has emphasized this phenomenon as a characteristic sign of totalitarian state systems.

Without discussing in detail the facts in question I ask to consider that hardly no true spontaneity, free volition or initiative existed under these circumstances, because everything which one declared or omitted to declare was premeditated as to the effect which it would make on the party authorities and supervisory agencies, to the power of which one felt completely exposed. Dr. Hellmuth Dix will deal in

detail with this question under the viewpoint of the state of necessity. Decisive is the following: The persons who really knew the defendants declared to us that they are men of honor. To such men, however, it can and must be left, in time of stress, to follow the path dictated by their conscience.

That is what I stressed in my final plea.

THE PRESIDENT: Gentlemen, we have gained approximately ten minutes over the schedule that was furnished us. According to that schedule, Dr. H. Laut Dix, Dr. Siemers and Dr. von Metzler are yet to speak.

We will take our recess, and you may readjust your schedule, if you wish, in order to consume the terminations which have been saved.

The Tribunal will now rise.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Dr. von Metzler? Dr. von Metzler, do you wish to speak twice?

DR. VON METZLER: Twice, Mr. President.

THE PRESIDENT: How long will this take?

DR. VON METZLER: About 25 or 30 minutes.

May it please the Tribunal, it is with a certain reluctance that I address your Honors once more on the subject which has been so thoroughly covered by the defense as well as the Prosecution — that is, the irrelevancy of the prosecution's evidence under Counts I and V — and I crave for indulgence if I once more respectfully draw Your Honors' attention to a few features of this issue on which I am compelled to touch on rebuttal of the pleadings of the prosecution as apparently there are still misunderstandings as to the position of the defense taken on this question insofar as I am again speaking on behalf of all defendants.

At the outset of their arguments under Counts I and V the prosecution submits that the doctrine which this Honorable Tribunal is called upon to enforce is of the most serious bearing to the world and that it has never been of greater import than it is at this very moment and the prosecution then goes on to invite this Honorable Tribunal to insure that the doctrine is not extended beyond the bounds of reason, justice and hard common sense.

This is exactly the position of the defense. The crimes of which the defendants are accused under Counts I and V are of such a gravity that the legal theories to be applied in assessing their guilt should be stated in a conservative manner in order to avoid a miscarriage of justice by indulging in vague legal concepts of criminal guilt, all the more, as so far there does not exist any statute containing a precise definition of the prerequisites of a crime against peace; and it should be furthermore clear that, in view of the serious character of the charges and the far reaching consequences which the judgment of a tribunal dealing with such



charges may have in this special field of international law, the evidence bearing out the guilt of the defendants should be particularly conclusive and beyond any reasonable doubt if a conviction of the defendants should stand its test as a milestone to a better world of peace and freedom.

It is the firm conviction of the defense that the feeling of this grave responsibility which is upon every tribunal in deciding on an issue of this nature was the decisive factor which brought about the conservative and extremely reasonable conception of what is knowledge of Hitler's aggressive aims as expressed in the IMT judgment and I would furthermore say that the prosecution has apparently misinterpreted the position of the defense as to the prerequisites of such knowledge on the part of the defendants in this trial.

It is certainly not the position of the defense that in order to establish such knowledge the prosecution has to prove that the defendants knew exactly the date and the victims of any aggressive step of the Nazi regime. If the defense referred to the four secret meetings at which Hitler revealed his plans to a limited circle of his followers, it was only for the reason stated by the IMT itself — namely, that the declarations which Hitler made in these meetings were quite unmistakable in their terms so that they could be no doubt any more in the minds of those who attended these meetings as to the aggressive aim of its policy. This and only this is the meaning of the phrase used by the defense that there must be proved a knowledge on the part of the defendants of the specific aggressive plans of Hitler. And it should be noted in this connection that the declarations made by Hitler at those four secret meetings did not in all cases indicate the exact date and consecutive order of the aggressive steps he had in mind.

The essential feature of these conferences was that Hitler made it unmistakably clear to his followers that he had definitely made up his mind to wage wars of aggression. This was the reason why the IMT laid so much stress on these conferences as the grounds of the acquittal of the

various defendants by the IMT of the charge of crimes against peace and it is really strange that the prosecution who must have read those parts of the IMT judgment still seem to ignore this fact. The IMT has assumed only in the case of the defendants who participated in those meetings that their knowledge of the Hitler's aggressive aims was proved beyond reasonable doubt. It should, therefore, be stressed once more that the IMT has limited the circle of those who were responsible for a crime against peace exclusively under the aspect of the state of mind of the defendants — that is, the extent of their knowledge, and not under the aspect of the importance of their contribution to the German war effort.

The Prosecution is well aware of the necessity to place definite limitations on the circle of men responsible for crimes against peace. The prosecution hereby follows the line of the IMT that mass punishments should be avoided but, unfortunately, they do not let themselves be guided by the standard adopted by the IMT in order to avoid such mass punishment — namely, a conservative interpretation of what knowledge of Hitler's aggressive aims. Instead the prosecution submits that such limitations of the circle of responsible men can be based only on the degree of their participation in aiding the German war effort. That this is in flat contradiction to the IMT judgment should be clear when considering carefully its ground and it should be equally clear that the position of the prosecution is in flat contradiction to those principles of reason, justice and hard common sense to which they refer at the outset of their statement, for in a modern war which depends on the contribution to the war effort of all parts of a nation's economy it is, in the view of the defense, impossible to state where such contributions begin to be substantial or responsible enough to justify a criminal participation in the light of the prosecution's theory. And it should be noted in this connection once more that, as repeatedly pointed out by the defense, according to the grounds of acquittal of Speer by the IMT, the armament production is no activity

which involves engaging in the common plan to wage an aggressive war or in the waging of such war; and, according to the grounds of acquittal of the IMT defendant Schacht, armament in itself is no crime against peace. For this reason alone the Prosecution's theory of the criminal character of Farben's contribution to the German war effort cannot be accepted.

Apart from this, it should be stressed once more that the prosecution has overrated the importance of such contribution by Farben. I may refer once more to the basic information of the defense stating that Farben's share in the German chemical industry under the aspect of capital turnover and staff equalled 25.4 to 48.5 percent, and its share in the entire German industry 1.4 to 4.7 percent. As furthermore follows from the basic information, as far as the production rise of the German industry in the years 1932 up to 1938 is concerned, Farben lagged far behind the other German industries including the chemical industry. Farben's share in the chemical industry dropped with respect to capital from 48 to 45 percent and with regard to turnover from 32 to 25 percent whereas Farben's share in the turnover of the entire German industry dropped from 2.61 percent to 2.03 percent and its share in the total number of staff members dropped from 1.75 per cent to 1.5 percent. These figures clearly show that the allegation of the prosecution of the dominant role which Farben allegedly played in building up the Nazi war machine is not supported by the actual facts and it should be equally clear on the basis of these figures that it is impossible to determine what is a substantial and responsible participation in aiding the war effort in the light of the prosecution's theory.

It is, therefore, the position of the defense that the state of mind of the defendants under Counts I and V can be judged only by the standard adopted in the IMT Judgment. To make it clear once more, the defense do not contend that prosecution must prove the participation of the defendants in those 4 secret meetings dealt with in the IMT. It would be sufficient to establish that the defendants by some way or other obtained knowledge of Hitler's aggressive plans. No such proof has been offered by the Prosecution.



DR. von METZLER Cont'd:

Moreover, the Defense contends that the Prosecution had not proven even the vague knowledge of the defendants under their theory of the state of mind that Military Power would be used to carry out the National policy of aggrandizement. The Prosecution admit that they were not able to offer any direct proof bearing out this allegation, and they rely, therefore, on circumstantial evidence which, however, as already pointed out by the Defense, by no means is beyond any reasonable doubt."

The Prosecution entirely disregards the fact that as proved by ample evidence offered by the Defense, Hitler and his followers in various speeches up to the very beginning of the war, again and again stressed their love for peace and their determination to solve any international problems in a peaceful manner.

The Prosecution has failed to offer any evidence on the fact that the defendants did not believe in these solemn declarations. As to the re-armament measures, therefore, as several defendants have testified, in the face of these solemn declarations, the conclusion was inescapable that the armament served either the purpose of a prospective defensive war or was intended to give Germany a more solid backing in regaining its former position of an equal partner in the field of foreign policies.

The Prosecution argue that the Defense has not offered any substantial evidence bearing out this thesis, but quite apart from having in reality introduced such evidence, the Defense would say that the burden of proof concerning the knowledge on the part of the defendants, of an aggressive war being prepared, is exclusively and at all times on the Prosecution.

It should be stressed in this connection that the Defendants, in spite of their position as Vorstand members of Farben, cannot be considered as having had a political knowledge surpassing that of an average business

men in Germany. To every observer who knew conditions in Germany at that time, this is a matter which needs no further explanation, and all endeavors of the Prosecution to raise the defendants above this level are in the field of mere speculation, and not supported by any proof.

A further feature should be considered in this connection. As shown by the evidence of the Defense, the defendants were pledged to secrecy, even towards one another, as far as matters of military importance were concerned. Therefore, their pledge to secrecy prevented the defendants from gathering information about such matters outside of their own working field, even if they should have wished to obtain such information.

As for the rest, I do not propose to deal once more with the subject of circumstantial evidence which I have covered already in my closing statement. I may, however, point out in this connection that on page 11 of the Closing Statement of the Prosecution, they refer to an affidavit of the defendant von Schnitzler which, according to the ruling of this Honorable Tribunal, they may not use as far as the other defendants are concerned.

I may be permitted, furthermore, to refer once more to the defendants acquitted by the DFT of the charge of crimes against peace, who most certainly had more knowledge of inside facts regarding the building up of the German war machine than these defendants. If the Prosecution on page 12 of their Closing Statement, tried to minimize the role played by four of the acquitted defendants, namely, Speer, Sauckel, Streicher and Fritzsche before the outbreak of the war, they apparently are not aware of the importance of the position which a Gauleiter has, - as for instance Sauckel and Streicher had in the Third Reich - and they furthermore overlook the fact that all of these defendants were also acquitted of the charge of having waged an aggressive war after its outbreak, when they rose to more important positions.

Apart from this, The Prosecution omits to mention that such men as

Schacht who undoubtedly was responsible in a substantial degree for the economic preparation of Germany's war effort, and Bormann who, as the Chief of the Party Chancellery, was one of the leading men of the Third Reich, were also acquitted of the charge of having participated in the preparation and waging of aggressive war.

The Defense, therefore, most decidedly would say that they cannot accept the viewpoint of the Prosecution that the defendants in this dock, being ordinary business men should be treated more severely than those high governmental officials who were acquitted by the IMT. This would be incompatible, in my humble opinion, with the principles of justice and fairness, and it is really extraordinary that the Prosecution still ignore this fact just as they, in silence, pass over the ruling of the Tribunal in the Krupp case, who took due consideration of the IMT judgment.

The weakness of the Prosecution's position, in my mind cannot be illustrated better than by the observations made on page 13 to 16 concerning certain features of the case of the defendant Haeffliger.

If the Prosecution allege that this evidence bears out, beyond reasonable doubt, that the defendant Haeffliger knew that Hitler was preparing an aggressive war, then this shows clearly that the Prosecution entirely disregard the burden of proof which is upon them, and that they apparently do not pay any attention to the evidence produced by the Defense.

The memorandum of 11 March, 1938, by no means proves that either Haeffliger or any of the other defendants had knowledge that Hitler prepared an aggressive war, especially an invasion of Austria and Czechoslovakia. On the contrary, it follows from this memorandum that Haeffliger was completely taken by surprise when, on the morning of the 11th of March 1938, he was informed about mobilisation measures taken in Southern Germany and troop movements along the Austrian and Czechoslovakia borders. The phrase, "like a stroke of lightning from a clear sky", is sufficient proof of the absence of any knowledge on the part of the defendant Haeffli-



ger as to the aggressive steps planned by Hitler. The phrase that the march into Austria was an established fact, has been completely misinterpreted by the Prosecution.

On account of the information received up to the evening of March 11, 1938 there could not be any more doubt that German troops were on the point of moving into Austria and that, therefore, the march into Austria was an established fact. As to the so-called "short thrust" into Czechoslovakia, the defendant Haeffliger testified during his examination-in-chief, page 9451-9452 of the transcript, that upon receiving the information about the mobilization measures taken along the Czechoslovakian and Austrian borders, it struck him that the march into Austria might entail international complications, especially counter measures by the neighboring countries, in which Czechoslovakia might be involved, and that therefore in case of any such counter's measures, German troops might march into Czechoslovakia. In this connection it may be pointed out that as testified by the defendant Gatineau, some time before Austria became part of the Reich, the possibility was considered by the German public, that Czechoslovakia might become an air base for the Russian Air Force. In any case, the phrase, "Short thrust into Czechoslovakia" does not prove that the defendant Haeffliger had any knowledge of aggressive steps being prepared by Hitler against Czechoslovakia and the fact that after the Austrian Anschluss, German troops did not move into Czechoslovakia, clearly shows that no such knowledge had existed on the part of the defendant Haeffliger.

As to the conversation which took place in April 1938, between Haeffliger and Hitler's Economic Advisor Keppler, the Prosecution apparently has not read carefully the file note of 6 April, 1938. It appears from this file note that it was the Czech Chemical concern, Prager-Verein, shortly called Aussig, which had approached Farben with a view of selling part of its shares to Farben. It was, therefore, not Farben's initiative, if Haeffliger took the opportunity to sound out Keppler on this matter,

and the Defense cannot see what all of this has to do with the knowledge of the defendant Haeffliger, of Hitler's aggressive aims.

Again I may refer to the examination in chief of the defendant Haeffliger, (Page 9164 of the transcript). The same holds true with regard to the New Order for the greater Austrian Chemical Industry.

As to the Conference on Czechoslovakia, of the 17th of May, 1938, the purpose and meaning of this Conference has been clearly described by the Prosecution witness, Frank-Fahle, page 2034.

It appears from this testimony that the persons participating in such conferences considered the possibility of a peaceful incorporation of the Sudeten area into the German Reich, and that in this event Farben did not wish to find itself as unprepared as it was in the case of Austria. No knowledge of Hitler's aggressive aims, therefore, can be derived from a participation in said Conference. I may refer to my Closing Brief dealing with this Conference on page 51 to 53. Again it is inconceivable what Haeffliger's role which he played in connection with the taking over of the Aussig Prague Plant or by participating in the conference of November, 1938, Prosecution Exhibit 1906, dealing with the non-establishment of an independent production of nitrogen in the remaining part of Czechoslovakia, has to do with the knowledge on his part of Hitler's aggressive aims.

In order to avoid repetition, reference is made to Haeffliger's examination in chief, referring especially to page 9174 to 9176 of the transcript. As to the letter of von der Heyde and Krueger of 11 August, 1939 concerning Haeffliger's citizenship, it is really extraordinary that the Prosecution entirely disregards the affidavit of its own witness, Krueger, which he gave already as far back as 1945, Haeffliger Exhibit 41, in which he described this letter as typical "window dressing", and not in accordance with the true facts.

Reference is made to pages 5 to 7 of my closing brief. Therefore, in

fact, the importance of Haefliger's remaining a Swiss National never was considered by the Vorstand. Otherwise, the defendant von der Heyde never would have advised the deceased Vorstand member, Buhl, that he should inform Haefliger of the contents of the letter in question.

Summarizing, therefore, the Defense would say that the evidence offered in the case of Haefliger by no means proved any knowledge on his part of Hitler's aggressive aims.

In concluding my argument on this specific subject, I might respectfully once more draw Your Honors' attention to circumstantial evidence which, in my mind, proves beyond reasonable doubt that the Vorstand of Farben could not possibly be interested in any war started by Germany because Farben could not benefit by such a war. It may be taken for granted that any realistic business man of the standing of the defendants, who knew the world and the economic power of the other countries, especially of the United States, did not share the opinion, that in the long run Germany would win this war.

In view of the extremely precarious situation of Germany in the field of the supply of raw materials necessary for a modern warfare, and the economic power of the United States, there could be no doubt for a far sighted man, as to the outcome of such a war.

The example of the first World War was a convincing proof thereof and the consequence which the first World War had on Farben's scope of business, described in the elaborate closing statement of my colleague, Silcher, were such that it would have been indeed folly for the Farben Vorstand to participate in any preparation of an aggressive war by Germany.

In a criminal case the question of the possible motives of a defendant is of importance when considering any circumstantial evidence offered on his guilt. In this case such consideration clearly shows that no reason-



11 June-44-FL-9-7-Stewart  
Court No. VI, Case VI

able motives at all could have induced any of the defendants to act along the line which the Prosecution, in spite of all of its efforts, in our mind, has tried to establish without any success.

May it please the Tribunal;

In consequence of an agreement among Defense counsel I dealt in my final plea with the international law basis of Count II of the indictment, spoliation. The entire defense has asked me therefore to give my opinion concerning the legal explanations of the prosecution in this respect.

In my final plea I explained that the penal codes and the provisions of international law give only a definition of the conception of "spoliation" in the narrow meaning of the word, but not a definition for this conception as the Prosecution defines every economic and industrial activity abroad, all the same whether it took place pursuant to agreements concluded between states or between German and the foreign industry. The entire statements of the Prosecution suffer of this basic mistake, namely of the fact that the Prosecution considers it a matter of course that according to the provisions of international law any economic activity in occupied territories represents a criminal act, without, however, giving any reasons and without stating from what legal provisions it derives its far-reaching opinion. I had hoped that the prosecution would make up for the hitherto existing lack of any definition of the elements of crime by making a clear statement at least at this final stage of the trial. The prosecution did not do so, however, because it obviously knows that neither the Control Council Law nor the Rules for the Hague Land Warfare Regulations contain any definition and, because it rightfully assumes that its entire thesis concerning Count II of the indictment would be shaken by a clear definition of that conception. Even in this final stage of the trial the Prosecution does not explain what an occupying power or an industrialist is allowed to do in the occupied territory or what they are forbidden to do; it hopes to profit by this uncertainty of the legal foundation, it takes only two conceptions of the Rules for the Hague Land Warfare as the basis of its arguments and it leaves without consideration all the other viewpoints of the same Hague Rules of Land Warfare.

On the one hand the prosecution speaks of the basic principle that

"belligerent occupation which according to its nature is something temporary and ephemeral should not be used to bring about any change, for instance of ownership, which is intended for a long period or for good" and, on the other hand, it speaks of the further principle that "an occupied country should not be forced to assist the waging of making war of its enemy, taking thereby an active part in its own definite defeat."

Using these ideas as a basis, the prosecution mixes the single facts of spoliation into an entangled medley, so that these cases differ from one another from a legal and factual viewpoint. It would lead us too far astray if we were to disentangle this medley and to represent anew the facts distorted in part by the prosecution. I only wish to go into the two aforesaid conceptions:

1.) The principle that no permanent change of ownership is to be brought about is not contained as a general principle in the Hague Rules for Land Warfare. On the contrary: Art. 23, g expressly permits the "destruction or removal of enemy property", if such destruction or removal "is urgently needed by the demands of war." Art. 53 permits the confiscation "of any kind of war supplies, even if they are the property of private persons." The preamble, which establishes the respect for the civilian population contains, furthermore, the restrictions and, in connection herewith, it entirely disregarded the fact that since the wars of the past century which form the basis of the Hague Land Warfare Regulations of 1907, the war requirements have essentially changed in their countenance and gotten an entirely different meaning. In an economic war and in a total war, where the entire civilian population and the entire industry of the warring countries are involved on both sides, not only pure military measures, but also economic measures and encroachments upon the industry of the occupied territory fall perforce under the "demands of war". As sad and regrettable as this result may be, one cannot overlook this compulsory consequence when considering the actions of the warring powers from the viewpoint of criminal and international law. From this viewpoint



only can it be understood that the United States of America as well as the British Government consider themselves entitled to bomb the entire German industry and even the French industry, although according to the wording of Art. 25 of the Hague Land Warfare Regulations this is unequivocally forbidden.

The wrong conclusions of the prosecution are based moreover upon the permanent mistake which was also contained in its yesterday's final plea, that it disregards an absolutely decisive viewpoint of the Hague Land Warfare Regulations, namely Art. 43, which I referred to in detail in my final plea. In accordance with this provision of international law, the occupying power is bound to take care that in the occupied territory the economy of the country is working, and that for this purpose the industrial enterprises are to continue operating. This article - and that is an important factor - contains not only the authorization, but also the obligation to interfere in the economic life of the occupied territory. It is extremely significant that in all its statements the prosecution never refers to this provision of the Hague Land Warfare Regulations and that it always argues as though this Art. 43 were non-existent. But just this article is of decisive importance when judging IG Farben's activity in the occupied territory. I only need to remind you of the cases of Francolor, Rhone-Poulenc, the Oxygen plants in Alsace, and Boruta. Only by incorporating them in IG was it possible to keep these factories operating during the whole war, and only by incorporating them into IG did these factories not suffer any damage; to the contrary, with the aid of IG they received quotas and raw materials and by the aid of IG, of its products and processes of production they could start new branches of production and could improve their economic state even during the war.

It was not by chance that the important French dyestuff industrialists FROSSARD and DUCHEMIN applied to IG and wanted to negotiate with their old business friends von SCHNITZLER, ter MEER, and others. It is not by chance

that at the time of the conclusion of the Francolor agreement the French president of Francolor during his speech declared this agreement ideal, emphasizing that the interests of both parties had been reconciled in the happiest way. It is no coincidence that the French dyestuff industrialists agreed with their old business friends v. SCHNEIZLER and ter MEER, that the dyestuff factory Muehlhausen was bought by IG in order to protect this factory and to make it possible to settle matters after peace would be concluded.

The case of Boruta is also in accordance with the meaning of Art. 43 of the Hague Rules for Landwarfare, for, according to the convincing testimony of the witness WINKLER all measures, the appointment of the commissars as well as the sale to IG, were taken in the interest of the economic power of the occupied territory. For only by the aid of the new capital of 5 million Reichsmark, invested by IG in addition to the sales price, and only by the aid of the chemical experiences and the production process of IG, could this firm, owned for the largest part by the Polish state, be saved from financial collapse and inactivation.

In all these cases it is a distortion and obviously tendentious if the prosecution speaks of the terrible harm which the activity of IG did to the internal economic structure of the occupied territory. It is the same distortion and tendency if the prosecution names Dr. SZPILFOGL as an example. The defendants feel just as moved by the fate of Dr. SZPILFOGL, who was transferred to the Warsaw Ghetto by the SS, as do the prosecution and defense. However, the fate of Dr. SZPILFOGL has nothing to do with the activity of IG and is not at all an instructive example for plunder on the part of IG. The prosecution is quite aware of this fact; for it knows that Dr. SZPILFOGL and his family were persecuted without any connection with IG, as Dr. SZPILFOGL himself confirmed as a witness, and it knows especially that IG did not acquire any rights in the enterprise of Dr. SZPILFOGL, the Wola, and did not enrich itself by it.

2.) The second principle which the prosecution has pointed out can be

refuted with a few words, namely the principle that an occupied territory may not "be forced to participate in measures against its own country and by this to cooperate in its own final defeat." With respect to this assertion I have to point out that the prosecution did not say in which country IG is supposed to have violated this principle. For the countries concerned, especially Poland and France, were completely defeated, so that no measures were possible at all against their own countries nor cooperation in their final defeat either. Moreover the prosecution quoted the Hague Rules for Land Warfare incorrectly. Article 23 as well as Article 52 do not deal with occupied territory in general but only with the inhabitants who should not "participate in war-like actions against their country"; that is a legal provision which has nothing to do with the maintenance of economic enterprises.

Finally, the arguments of the prosecution contain an inconsistency which necessarily leads to false conclusions. When dealing with Count I, the prosecution designates all economic products as war material, asserting that IG by producing gasoline, dyestuffs etc. prepared a war of aggression. But if the prosecution takes this far-reaching position that in the case of a modern economic war it designates all industrial products as war material, it must be consistent and designate the same products that is war supplies, as war material, when it is dealing with Count II. If this is correct in the sense of the Hague Regulations of Land Warfare and especially of Article 53, we are concerned here with war supplies which may be confiscated even though they belong to private persons, and from this follows necessarily that the "requirements of war" of Article 23 of the Hague Regulations of Land Warfare are to be applied.

For the sake of completeness it may be mentioned that the assertion of the prosecution on page 88/89 of its final plea is incorrect, namely that with regard to spoliation the defense is referring to a state of necessity. In the part of my final plea concerning spoliation this objection was not raised a single time, especially not in connection with the dyestuff



plants and the oxygen plant in Alsace as it was asserted by the prosecution.

The further statements made by the prosecution do not contain any legal viewpoints. The sentence:

"It was a matter of course to the government as well as to Farben that the supermen will dominate and the other people will serve," is an unjustified assertion which may be applicable to Hitler but not to Farben. A look at the Francolor agreement proves the incorrectness of this assertion which is opposed by the fact of the French chairman in Francolor and its French administration.

The prosecution further states:

"Ever since people are waging wars the temptation has existed for the occupying powers to plunder the conquered country."

This sentence may be correct; but it can only support my thesis of the legal uncertainty in international law and perhaps it should have induced the prosecution to think, with regard to the viewpoints of its thesis, about the measures taken by the Allied Military Governments in occupied Germany. It rather strikes me that the prosecution intentionally does not touch the subject, as well as Art. 43; it knows only too well that during the last three years the Allies have continuously undertaken innumerable actions which, according to the opinion of the prosecution, are absolutely clear violations of the Hague Convention and meet the fact of spoliation in the sense of the prosecution. Just these parallel incidents of the dismantling of hundreds of factories and the taking away of numberless thousands of machines and patents ought to force the prosecution, if its conviction of international law is honest, to consider whether it can maintain with a clear conscience its thesis of international law in this trial. The time will come when at least the moral reproach will be raised against the American prosecution that in this trial it designates agreements between the German, French and Norwegian Industry - for instance Francolor, Rhone-Poulenc and Norsk Hydro - as war crimes, whereas its own government on the basis of the Morgenthau plan and

11 June-44-IL-10-7-Stewart (Int. von Schon)  
Court VI Case VI

JCS 1067 confiscated German industrial private property from the  
legitimate owners to an unimaginably large extent.

THE PRESIDENT: Dr. Helmut Dix.

DR. H. DIX: I should like to remark first of all that the translation of my statements was made late at night and there will be certainly some corrections necessary.

YOUR HONORS:

I have been asked by the entire defense to reply once more to the statements made in the final plea of the prosecution concerning the problem of state of necessity. I shall follow the argumentation of the prosecution in its essential points.

If the Prosecution refers to the other Nurnberg trials, I have nothing to say about the Flick case, for in this case it has been decided for the German economy and industry that a state of necessity excludes liability of the industrialists carrying out the forced labor program of the national socialist government.

The case of the IGT and the Milch case, as it has always been pointed out by the defense are quite different, because there are concerned with persons who participated in the important political decisions, who were able to judge on their factual and legal basis, and who, in the sense of the old doctrines of constitutional and international law quoted in my final plea bore especial public responsibility.

In the other trials the persons convicted were guilty of having caused the death of hundreds, of thousands, even of millions of human beings. They were found guilty of normal crimes which differ from the ordinary crimes only by their terrible extent. I believe that nobody in this court will put these crimes on the same level as the charges made by the Prosecution in the industrial cases.

If the Prosecution tries to draw a parallel between the objection of the superior order and the objection of the



state of necessity in the sense of the Flick verdict of the defense, this does not meet the special problems of the industrial trials. It is true that the superior orders for the commitment of a normal individual crime against penal and international law is, in the military penal law of most of the civilized nations no absolute reason for excluding culpability in the event that the person concerned was able to recognize the illegality of the order.

As the judgement in case 5 has correctly recognized the state of facts and the question of the law to be applied concerning the forced labor program of the national socialist government are completely different. We are not concerned here, with the order of a superior to commit a specific crime, but, as I explained in my final plea, with the whole system of legal, moral, and factual requirements created by the highest authority of the state, against which the normal citizen had no power to resist and which by virtue of the terror of the legal authorities and the police he could not evade without immediate danger for personal freedom and life. In this respect I also remind you of the problems of international law not only with regard to the German concept of international law but also more of the legal and therefore, too, the moral primacy of law of the own state in comparison to international law which is strongly rooted in the legal conception of the continental states and which, with respect to the most crucial questions of public life, is also well known to Anglo-Saxon law. This alone - quite apart from the insufficient factual information - prevented each industrialist from opposing this forced labor program successfully. It must be added that during the war every state and every nation, and above all the national socialist regime demanded unconditional obedience of its subject and this demand is

also morally supported in principle by the doctrines of religion and ethics. With regard to these questions there is and was no authority to which a German might appeal. Here a conflict of two legal systems and values becomes evident from which there was no escape. Resistance would not only have meant a sacrifice of life or at least of liberty, but because of its legal and moral problems and its uselessness, it would have met with no understanding by the masses nor by the opponents of the regime including the foreigners who were living in Germany. Nobody in the world who knows and want to war against the irresistible force of the national socialist regime can contest that the resistance of individual industrialists or of a plant or concern management would not have been able to bring about any change in the carrying out of the forced labor program. A joint resistance however was practically impossible because of the terror of the police and the control of all means of information and transportation as experience has shown. Therefore the behaviour of the individual was irrelevant. In view of this state of affairs it is a contrary to justice to punish these persons who had to obey their government.

If in this respect the verdict in the Flick case does not pronounce any punishment, it is, as I already pointed out repeatedly, in accordance with the practical policy of the occupying powers. For, apart from the defendants here in Nurnberg, there will scarcely be a single official or industrialist under arrest who perforce had to play a part in the forced labor program and who within the scope of the program treated the workers assigned to him directly.

After all these explanations it seems to be superfluous to deal in detail with the remarks of the Prosecution that the citizen of a country has more liberty than the soldier

of an army. In this respect I only refer to the findings of the IMT concerning the throttling of free speech under the national socialist regime. I am sure that every well informed person in the world will believe that a man who during world war I served in the strictly disciplined imperial German army felt much more free than an ordinary citizen in National-Socialist Germany during the last war.

The Prosecution rightfully points out that the thesis of a state of necessity hitherto applied refers in general to an individual state of necessity as it originates and originated through an actual menace in every day life. In this respect the statements of the Prosecution supplement my observations in the final plea concerning the special form of collective coercion which originated from the legislation and policy of a government. I already pointed out that the American Military Government in its legislation recognizes the importance of this collective coercion, which not always made an individual menace visible. The verdict in case 5 rightfully evaluated the collective coercion as stronger and more important than the individual coercion. If some verdicts, considering the ordinary state of necessity is legal questions negates its existence because the menace is distant or lying in the future this may be justified in the specific case since e.g. by appeals to the sovereign power another salvation might be possible. This however, is impossible in the case of a collective coercion exercised by a government. This collective coercion is omni-present, escapable and, therefore, all the more effective. If the prosecution finally emphasises that even in such a state of necessity no harm should be done to humanity, this is not always true in such a vague form. Above all, one should not forget that the justification of



the forced labor program could not be judged by the individual citizen, as I already explained in detail in my final plea and, in particular, in my closing brief. It is quite different with the killing of an innocent person which the prosecution cites as an example.

The prosecution is also right in emphasizing that these problems are of great importance for international law and, as I should like to add, also for the constitutional law of the future. That is certainly the reason why the IMT, quite apart from the sentencing of the politically leading main war criminals, pointed to the future possibility of a moral choice, as I mentioned here repeatedly. It is certainly also a reason for the fact that Flick verdict confirmed the state of necessity, because the recognition of a right and an obligation of the individual citizen to offer resistance against the sovereign power in legally and morally doubtful questions would add anarchy within the countries to the upsetting of international law which we had to witness, and would increase the dissolution of all regulating bonds. The democracies will understand this since they know best how differently political and legal matters are judged by various individuals. In this connection I recall the speech by the French judge in the IMT trial, Donnedieu de Vabres. Political science of old times, as I said in my final plea, limited therefore rightfully the right to resistance in such cases to those persons who were politically decisive. The paragraph of the final plea of the IMT prosecution, page 73 of the English and 86 of the German, refers according to its wording to actions which were carried out on the basis of the state authority, that is, by virtue of its power. This, however, refers to public actions of individual persons who are exercising public or international functions, but not to

the conduct of an ordinary citizen which is enforced by the laws of the state in question. This paragraph of the IIT transcript is followed by the indication to the problem of the moral choice and, therefore, the state of necessity for other, future cases.

In as much as the Prosecution made statements concerning the individual counts of the indictment, Dr. Siemers has already dealt with Count 2. With respect to count I of the indictment and, in addition to Dr. V. Metzler's statements, I should like to mention the following:

With regard to this count the defendants do not refer as we know, to the state of necessity as described above. Even otherwise they were obliged to obey the military preparations of Germany in the case of war. For armament as such and even voluntary cooperation in it is permitted everywhere according to international law, as it becomes apparent from Exhibits 578 and 438 cited by the Prosecution. Prosecution exhibit 552 which is also mentioned in the connection does not prove at all a particular activity of Farben. That just the gasoline synthesis promoted by Carl Bosch, according to Pros. Exhibit 517 and 540, should have served aggressive plans will, I believe not be asserted seriously even by the Prosecution.

From the quite normal productions the accused members of the Vorstand could not deduce and aggressive plans by Hitler in violation of international law. It is true that during the last year before the outbreak of the war partly abroad and also by some people in Germany, aggressive plans of Hitler were temporarily feared, less because of the military armament than because of his political and personal attitude. But this fear did not offer any possibility to foresee the developments of things.

The present time shows that in any case a private person

who does not hold a state function and who consequently has no special political knowledge and responsibility cannot deduce any practical consequences from such fears, for in fact, he is in no way able to examine his views or even to prove them. Even if it be assumed that before the last war an authoritative German industrialist had such vague fears it is impossible to draw any conclusion from this fact for a complicity in an aggressive war.



For what could he do in national-socialist Germany? It was practically impossible or useless to inform Hitler of one's apprehensions, as the witness Schmidt testified whom I interrogated last fall. Hitler would have denied such aggressive intentions, for he excelled in keeping his plans secret, a fact recognized also by the Prosecution. An appeal to publicity was impossible in national-socialist Germany. Punishment according to the severe law against malicious political acts or insults to the state and party (Heimlichegesetz) and transportation to a concentration camp would have been the consequence. The same applied to the defendants. They would not have been able to prove that their products which, as is shown by the documents, were planned for peace-time, served aggressive intentions. I already pointed out that it can be seen from the testimony of the witness Morgan that not even the Allies after the first World war had the opinion that the chemical industry served the war-purposes under normal circumstances.

How could the accused Vorstand-members, who are cool-headed businessmen and technicians, be expected to take any measures by reason of vague suspicions, if they had any? We all know that far better informed and far more authorized persons tried to take steps during the last weeks before the outbreak of the war, but in vain. In this sense also for persons of such a position as that of the defendants there was no possibility and no outlet to stop the development. This is not - as I have mentioned - a state of necessity in the above explained sense; but a factual and legal impossibility to act successfully.

As to the production of I.G. during the war, I refer to my previous statements and to that of the other defense counsel.

Concerning Count III, the Prosecution tries to prove the liability of I.G. by the assertion that I.G. took an initiative which was not justified by a state of necessity. In my Final Plea and in my Closing Brief I already pointed out that the forced labor program made necessary a cooperation of industrialists in many legal and moral respects. The foreign workers had to be accommodated, fed and employed in the right place, all that in their own interest. This required money and initiative on the part of industry including I.G., which certainly I.G. cannot be reproached for. It has been frequently emphasized that the employment of foreigners could not be avoided because industry had to fulfil their production and construction orders under the pressure of law and the terror of the Gestapo. In this connection I should like to explain that the German word "Auflage" means "order" or "command". It is therefore correct to translate this by "orders" and not by "quotas", as it happened in the Flick case. For the filling of these orders industry needed foreign labor assigned to it in fixed quotas. Under the pressure of these production orders it could not be avoided that some plant or its employees had to negotiate with the official agencies concerning the fulfilment of these quotas or perhaps their increase and that for these reasons had to develop a certain initiative.

If this had not been done and if thereby the production orders had not been carried out, this passivity would have resulted in severe reproaches. The exhibits mentioned by the prosecution show how urgent these construction and production orders were. A plant manager who had not met the demands made to this effect by his department and plant leaders, who for their part were also working under the pressure of production orders as described repeatedly, for instance by

the witness Giesen, had to count on being accused of war sabotage and treason. Thus this activity, too, is justified by the state of necessity created through the production orders and the fear of the consequences if they were not met.

Farben did not take any initiative--

THE PRESIDENT: Doctor, there seems to be some confusion with respect to the translation. Would you mind repeating what you have just said, or giving the interpreter a reference to the page of your memorandum?

DR. H. DIX: This is at the bottom of the English page 8.

Farben did not take any initiative serving its own interests of an expansion of the production and of the labor potential, in the sense of the sentence--that is, "guilty"--pronounced in Case Five.

For all constructions and productions of Farben during the war were due to demands and orders of the authorities, as for instance shown by the statements of the witness Struss made before this trial was started. The employment of foreign workers by Farben, and its initiative herein, was therefore caused by those construction and production orders, the lack of other workers and the state of necessity created by these circumstances. The same applies for Farben as for the entire German economy, and this as I already emphasized repeatedly, is practically recognized by the policy of the occupying powers.

There was no way to circumvent those duties and no resistance. This is not refuted by the fact that some measures could be avoided and that some inhumanity and duress could be prevented. Inasmuch as the defendants were able to do this for factual or other reasons, it was the duty of the



defense to emphasize these facts in order to refute the characterization of Farben and its Leads by the Prosecution. However, this does not alter the irresistible force of the system in questions of principle, which, like armament and labor programs, were of the most essential importance for the war.

DR. HOFFMANN (Counsel for Ambros): Your Honors, I have only a very few minutes' statement to make, and I don't want the statement of my colleague von Metzler to suffer therefrom.

THE PRESIDENT: Well, you may continue, and we will use all of your available time for the closing of these rebuttal arguments.

DR. HOFFMANN: Mr. President, Your Honors: In the speeches made for the entire defense it is not always simple to do justice to the opinions and the views of each individual counsel, but I am especially grateful that we are here having an opportunity to express our deviating opinions, and I should like to express such an opinion for myself and for my client, Ambros, with respect to some statements made by my colleague Dr. Siemers regarding the Hague Rules for Land Warfare. I am convinced that my learned colleague will not resent this, but I and my client believe that strict observance of the paragraphs of the Hague Rules for Land Warfare were an absolute duty and also that as far as my client is concerned this duty was fully observed. My statements in my final plea and also my statements in my trial brief are based on this opinion.

THE PRESIDENT: Very well. Then, Dr. von Metzler, you may conclude the rebuttal argument on behalf of counsel for the defendants in this case.

DR. VON METZLER (For the Defense): With Your Honors' permission, I shall submit now a few observations on the

subject of the theory of the responsibility of the Farben Vorstand members on behalf of all defendants. In doing so I do not propose to touch on all points raised in the closing statement of the Prosecution dealing with this particular issue, insofar as they are refuted already by the representations made in the closing statements and closing briefs of the Defense.

Furthermore, I shall not refer to the various points of the Prosecution statement which amount to nothing more than conclusions, assumptions and rhetorical allegations not supported by any actual facts, for it is our firm conviction that this Honorable Tribunal will not pay any attention to such irrelevant representations.

It was never the position of the Defense that Farben was a robot that ran by itself. Never has the Defense contested that Farben was run by its Vorstand. That is not the issue. The example given by the Prosecution of a ship sailing under its captain's control is not helpful in this connection. All comparisons of such kind, however elegant they may be, do not substitute the burden of proof which is upon the Prosecution, and in most cases, instead of clarifying, they, rather, obscure the issue.

The metaphor of the ship might be helpful if the Vorstand of Farben had approved of, and carried out, a policy dedicated to specific criminal purposes in the same manner as the captain sets the course of his ship, and in execution of such policy specific crimes had been committed. This, however, is just the point at issue.

The Prosecution has not offered any proof bearing out beyond reasonable doubt that such criminal policy has been decided on and executed by the Farben Vorstand. On the contrary, the Defense has offered evidence refuting such

allegations, as explained in my closing statement dealing with this subject. The Prosecution's theory in substance amounts to substituting the proof of a personal guilt of each defendant for specific crimes by applying the conception of a conspiracy which, as far as Count One is concerned, has not been proved, and as far as Counts Two and Three are concerned does not exist from a legal point of view, as also explained in my closing statement.

If, therefore, the conspiracy charge cannot be considered a sound approach to the problem of the individual responsibility of each Vorstand member for the alleged crimes, then the metaphor of the ship presents itself under a different aspect. If such a ship puts to sea for peaceful purposes and the stoker, in operating the boiler, commits a mistake-- does this imply a criminal responsibility of the captain? Or a second aspect: If the ship is under the control of twenty coordinated captains, special tasks being allocated to each of them, do the nineteen others share the responsibility for any faults committed by any one of those captains?

The utter absurdity of the suggestion of a ship being controlled by twenty coordinated captains show that this way of arguing is besides the point. In quoting two decisions of the Reich Supreme Court and the Bavarian Supreme Court in criminal matters, the Prosecution, with the unfailing instinct of a somnambulist, if I may say so, missed the mark. The decision of the Reich Supreme Court in criminal matters, Volume 33, page 261 of the 3rd of May, 1900, which is of the venerable age of forty-eight years, and therefore was rendered at a time when such gigantic concerns as Farben, with its special problems arising from the necessity of distributing the working fields among the different Vorstand members, did not yet exist, deals with an issue quite different from



that as alleged by the Prosecution, namely, with the case that under the provisions of the German Trade Regulations the owner of the enterprise may be held responsible for contraventions committed by some other person acting on his behalf.

Now, the Supreme Court of the Reich had to decide the question whether the Board of Directors of a mining company, that is, of a legal entity, has to be regarded the owner of the enterprise in the meaning of the aforesaid provisions. This specific question, which has nothing to do with the issue of our case, has been answered by said decision in the affirmative. Moreover, the above decision of the Reich Supreme Court dealt with an infringement of trade police regulations which can also be committed out of negligence. It is just the provision dealt with by Professor Metzger, on page 24 to 28 of his legal opinion introduced as Defense Exhibit 281; on page 28 he expressly points out that this provision of Article 151 of the Trade Regulations comprises also, and above all, infringements caused by negligence, and that, therefore, said provision is out of consideration as far as such crimes as charged in this trial are concerned. Insofar as the decision quoted by the Prosecution does not deal at all with the problem of the deliberate and wilful commission of crimes being the issue of our case.

The same holds true with regard to the second decision of the Bavarian Supreme Court in criminal matters, Volume 33, page 37, quoted by the Prosecution, which also deals with an infringement of police regulations caused by negligence, namely, of two provisions of the street traffic regulations of Munich. I do not feel quite certain that the street traffic regulations of Munich can possibly be considered a strong support of the Prosecution's theory relating

to crimes against peace and humanity. Just as the above-quoted decision of the Reich Supreme Court, this decision does not deal at all with the problem of the deliberate and wilful commission of a criminal offense. Apart from this, it should be stressed that in the case decided by said court, some members of the Vorstand of an athletic club had realized, and therefore had knowledge, that an offense had been committed, and nevertheless remained members of the Vorstand. In our case, however, the point at issue is that the accused Vorstand members did not have any knowledge of any crimes, granting that such crimes, contrary to the opinion of the Defense, had been committed outside the scope of their own working field.

As to the lengthy observations of the Prosecution dealing with the attitude of the defendant Kuehne, the Defense fails to see what all this has to do with the point at issue. The Prosecution tries to give a survey of the matters which this defendant allegedly was concerned with. This may be of some interest to the defense of Dr. Kuehne, but I cannot see in which respect all this is helpful in order to solve the problem which alone is at issue, namely, whether the other Vorstand members shared the responsibility for the activities of the defendant Kuehne, for instance.

Defense counsel as well as the defendants feel rather hurt by the allegation of the Prosecution that the defendants tried to shift the responsibility to one another, or third parties. Maybe the Prosecution has expected, and would have welcomed, such an attitude of the Defense. The Defense, however, confine themselves to calmly stating that nothing of the kind has happened, and hereby stick to the manner in which they hitherto presented their cases, although such an insinuating reproach would have deserved a sharp reaction.

Your Honors, we have reached now the very last stage of a grave and bitter trial. The curtain is about to drop, and now justice has to take its course amidst a world which has not yet recovered from the agonies it has lived through. Already new clouds are darkening the horizon of our hopes, and not a few express their doubts about the sense of trials of this kind. This makes the responsibility of this Honorable Tribunal still heavier.

Your Honors are about to pass a judgment that is intended to make history, a judgment on twenty-three men who headed the concern which, in many ways, was a benefactor of mankind. This is a tragic feature of the case that makes one pensive. Much has been said for and against these men that has to be weighed now by Your Honors thereafter in closed court, and in discharging the last duty of the Defense I respectfully submit that it is our sincere hope and belief that your judgment will be what every judgment ought to be--a landmark of justice.

THE PRESIDENT: The record in this case will now show that the Tribunal has heard the final and closing arguments of counsel. At this afternoon's session, the Tribunal will permit each defendant to address the Tribunal in person.

The Tribunal will rise until one-thirty.

(The Tribunal recessed at 1208 hours until 1330 hours,  
11 June 48)



AFTERNOON SESSION

(The Tribunal reconvened at 1330 hours 11 June 1948)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: In accordance with the order heretofore entered by the Tribunal, it is now ready to hear the final statements of such of the defendants as have indicated their desire to address the court. As the defendants are called they may leave the dock, come to the podium and address the Tribunal. May I remind them that the order contemplates that they shall use not to exceed ten minutes and if they can and will keep themselves within that limitation it will avoid the necessity of calling when the time has expired.

The defendant Krauch may now address the Tribunal.

DEFENDANT KRAUCH: Mr. President, Your Honors:

When I heard the final plea of the prosecution yesterday, I often thought of my colleagues in the United States and England and tried to imagine what these men would think, for, after all, they had similar problems. They like us were called upon by the state to perform certain duties. That was true then, before the world war, and that is true now, as we know from information received from the United States. A citizen cannot evade the call of the state. He must submit and must obey. The specific duty which I had to perform involved problems in the field of caring for the unemployed and obtaining work. This was an activity which would have to interest any technical man, any conscientious technical man, especially a man like myself, who for years had observed the terrible effects of this unemployment and had wondered whether he could not do something, could not make some contribution to do away with this unemployment.

Now we -- and I, too -- have been accused by the prosecution of having served a criminal government. No one said

15600

with Louis Morison of the Prosecution and Defense to correct the English translation. Case 6 - from Page 14518. Also 15638 filed after transcription 12 May 1948 14507 (1-67)

anything about that at the time either in Germany or abroad, and no prosecution raised its warning voice. All the more am I sometimes filled with bitterness when I see that we who did only what other citizens had to do are here in the dock. The day before yesterday we had an opportunity to hear the final plea of Mr. Sticher who described very well the services performed by Germany chemical industry, and particularly by I.G. Farben. I must say that I listened to his words with some pride for I saw that these were services which benefited not only the German people but all of humanity.

Today this enterprise to which my whole life's work was devoted is facing a dark and obscure future. Many of my most efficient associates and their families are facing ruin and their fate worries me more than my personal fate. I may perhaps express a general thought here.

It is the duty of a technical man to see today the problems of tomorrow and to devote himself to them. One problem, which I was working on was the production of synthetic fuel by means of hydrogenation of coal, that is by chemical processes, after it had been discovered that the natural petroleum resources of the world are being exhausted and that certain political developments were occurring. I am today filled with a certain satisfaction when I see that in the whole world scientists and economists are dealing with this problem which we -- and I had an important part in it -- took up twenty years earlier. At that time we exchanged experiences with great foreign companies -- I mention only the United States -- in such a friendly way that the recollection of this cooperation is one of the most happy recollections of my life.

I know it is fate that progress is not usually recognized. That has always been the case. As a rule progress is combatted and attacked and it even happens that, as the

prosecution has done, base motives are ascribed to this struggle for progress. The technical man recognizes this, but continues to work nevertheless. Occupation with natural sciences is a high and noble profession. It, too, is a struggle but not a struggle with men. It is a struggle with nature, with matter. Nature is not deceptive and cannot be deceived. It can be approached only with truth and respect, and only in this way can its problems be solved.

It is perhaps in a sense tragic that this experience has made us technical men all too often confide in those working with paper and with words more than with deeds. You can understand that it is a sacrifice for me to give up this work which I loved and to follow the call of the government to help in the Four Year Plan, in short to leave the struggle with nature and to take up the struggle with the paper in the struggle of administration, for which I really was not suited. I did so because I thought that I would help science and industry. I worked to this end and I am happy that I did so.

There was another sacrifice that I had to make. I came away from my associates to whom I was very much attached and had to get along with strangers. I did this, too, although it was very difficult for me. I had been very close to the worker, too; as a research man I was dependent on the work, the industry, the powers of observation, the enthusiasm of the workers which very early had made him -- not a slave-- as the prosecution says, but a comrade and a human being in the worker. That is how I always looked on the worker.

This occupation with natural science convinced me very early that there is a higher law above the laws of man, a law whose first commandment is humanity. I have tried to keep this commandment and observe it. Therefore, I consider



the prosecution's charges, especially heid.

How unfounded this charge is you may see, for example, from my conduct in the Schoenberg case. I have nothing to add to this and the other prosecution charges, since my counsel Dr. Boetcher, has exhausted all these points so excellently so that I cannot thank him better than by assuring him that I have nothing to add.

I ask Your Honors, however, to re-establish my honor which has been attacked by the prosecution, by acquitting me.

THE PRESIDENT: Defendant Schmitz will address the Tribunal.

DEFENDANT SCHMITZ: Mr. President, Your Honors:

My state of health made it impossible for me to testify myself on the witness stand to the enormous charges with which the prosecution has overwhelmed me and my colleagues. This trial which has been going on for over a year now has not lessened the shock which these attacks occasioned. I have only one answer: my conscience is clear and I feel free of all guilt.

For that reason the charges of the prosecution are especially oppressing, doubly so, because these charges affect not only myself and my co-defendants but are aimed at ruining the good name of our company to which our devotion and our life work were given and to which we all feel deeply bound; and so I will take advantage of this one opportunity in the course of this trial to make a personal statement, in addition to assuring you of my innocence, and, as former chairman of the Vorstand of Farben, to thank all those who had the courage to testify for Farben. "A friend in need is a friend indeed."

We have learned the truth of this saying and many a person whom honor and duty would have obliged to raise his voice here to serve the cause of truth and justice was silent for reasons of expediency or even raised his voice to serve his own interests and not truth. All the deeper is the feeling of gratitude to those who, ignoring all these considerations, tried really to see to it that what had been the truth for twenty years remains the truth before this tribunal.

I personally was filled with special satisfaction by a statement which, unfortunately, arrived too late and which came from the field of work from 1930 to the outbreak of war which was not only an important part of my professional work but to which I was also personally devoted; that is, the International Nitrogen Convention which included ten European countries. The French General Leur says in an affidavit dated 11 May 1948 and intended for this tribunal, after describing my work as president of the Convention Industrielle de l'Azote:

"In the course of these many meetings I had occasion to have frequent conversations with Dr. Schmitz. I must report on this subject that whether because of my age and the function which I held or whether from a personal feeling of sympathy which I shared equally, Dr. Schmitz always demonstrated toward me a deference expressed so delicately that I have always been extremely grateful to him and that I wish today to express my gratitude.

"In numerous conversations which I had under these various circumstances

with Dr. Schmitz, he never gave me occasion to think that he could possibly belong to the Nazi Party, that he could even have any sympathy for this party, and he never let me feel that his efforts in his role in I.G. Farben Industry could be directed in a subversive manner against the peace of the world and against France in particular."

To these words of an upright man spoken without any animosity as a Frenchman I have nothing to add.

A last word to clarify one question which has been brought up here so often in the last few months. How could such a big enterprise be directed at all and how was it directed? Two words characterize the work of the Vorstand of I. G. Farben: common sense and confidence. Common sense is the standard of the decisions to be made in big things and in small, and applying this principle in the daily work meant that a business transaction was sound only when, in the final analysis, it could satisfy both partners; but confidence was the bond between the responsible men who in such difficult times were at the head of I.G., no lighthearted confidence but a deep feeling of being able to trust, based on the knowledge of technical and — which is more important — the human qualities of all concerned.

A word from the opening statement of my defense counsel made a deep impression on me, the quotation from the book, "Civitas Dei of St. Augustin":

"What difference does it make under what government a mortal lives as long as those who govern do not force those who are governed to Godless and unjust acts?"

It was the tragedy of our lives that we, like our whole people, could not evade this compulsion of an absolute dictatorial and inhuman system in all ways, and today we, like our whole people, are faced with the ruins of our life work; but it was not our guilt either in a criminal sense or in a moral sense and so, at the end of this trial, I am deeply convinced that our trust in one another was justified and that the escutcheon of our enterprise, the I.G. is clear.



For many months while I have been under arrest I have been carrying with me an article from an American newspaper which I have thought about in many sleepless nights. It deals with the attitude of one of the greatest men of your history, your president, Abraham Lincoln, his views on justice. As a lawyer in a trial he made the following statement -- and I quote

"The best judge of human character that ever wrote has left these immortal words for us to ponder:

"! Good name in man or woman, dear, Mr Lord, is the immediate jewel of our souls; who steals my purse steals trash; 'tis something, nothing; 'twas mine, 'tis his, and has been slave to thousands; but he that filches from my my good name robs me of that which not enriches him and makes me poor indeed."

Your Honors, the good name of our I.G. and our own good name is, in the last analysis what this trial is about. I trust that you will give back to Farbon and to me this most costly possession.

THE PRESIDENT: Dr. von Schnitzler?

DEFENDANT von SCHNITZLER: Your Honors, since I did not take the witness stand during the trial, I should like to avail myself of this opportunity in order to explain in a few words what I consider to be of importance for the evaluation of the evidence and the arguments submitted in my case.

Two principles have guided me as my belief all through my life; love for peace and respect for my fellowmen. I come from a family of Rhenish Industrialists and bankers, and from this sphere of life I have learned that progress and peaceful living together are only possible if all interests are reconciled in an honest way. This opinion was confirmed by a round-the-world-trip in 1907-1908 when I got my insight in the interlacement of world economic connections. I learned how far the

wealth of a people is dependent on that of all the others, how sensitive is the mechanism of mutual give and take and I recognized that in the last analysis the basis for living together can only be mutual understanding and confidence.

The first world war which finished abruptly a non-precedented prosperity and throw the whole world, especially Germany, into long lasting misery, was a bitter experience to me and I hoped that I would never see such events for a second time. I got a deep aversion to all what might endanger peace. Therefore I have always been a follower of such a German economic policy which aimed at creating a basis of confidence towards our former enemies and which tried to fulfil the conditions of the Versailles treaty, even if they were extremely hard. I always have spoken in favor of Germany's participation in the League of Nations. In the early '20's I joined the Union Intellectuelle Europeenne, an international cultural institution working for reconciling the European peoples, and developing a great activity in Germany through the "German Culture Confederation". I supported and promoted the weekly "Europaische Revue", edited by this confederation, in moral and financial respect and by own essays. The "Europaische Revue" became a victim of the Third Reich, because it adhered to the ideas of the League of Nations.

In the field of my own profession in which I was working since 1912, in the beginning in one of the mother firms of I.G., I tried to act in the same reconciling manner. As early as 1919, Carl von Weinberg, one of my closest associates, who has been frequently mentioned in this case, employed me in international dye-stuffs negotiations. I later continued his work, and in the field of dye-stuffs I initiated in a decisive position an understanding of the dye-stuffs producers all Europe and helped to realize it. The cartel agreements

mentioned in the course of the trial and partly submitted in their exact wording can be regarded as a proof for my endeavours and for my success. Towards the same end of international cooperation served my activity in international exhibition and fair matters and in particular my activity as German general commissar for the World Fair in Barcelona.

During all my life I have been very fond of French language, literature and arts; I therefore consider it an especially cruel and unjust misunderstanding that the Prosecution charges me of having wanted to damage French economy. It has always been my wish and vivid idea to throw a bridge to the French world and to help in filling up the ditch separating Germany and France. This is proved by my activity in the German-French trade negotiations from 1925 till the outbreak of the war, and by my endeavours to intensify the existing connections with Belgian economy within the semi-official comite Belgian-Allemand. As my wife has a Belgian mother, my connections with Belgium have always been very close.



The idea of national socialism did never correspond to my nature. National Socialism was authoritarian and totalitarian, it permitted only what followed the line of its ideology. A business man, however, especially if his interests exceed the borders of his own country, has learned that his own wish can not be an absolute canon for his actions and is never allowed to be such, but that he always has to take into consideration the interests of his partners. This was the basic difference between my view of life and the principles of national socialism. Unfortunately I, like many Germans, fell for the illusion that one could influence and improve an authoritarian psychosis by personal activity. More prudent and more experienced men than I am, fell for this illusion. The visits to Berlin of Simon, Eden, Halifax, Mr. Churchills benevolent judgment, strengthened my mistake, as I have always been an admirer of British statesmanship.

Moreover another fact induced me to believe that one was right in making formal concessions to national socialism. The chemistry negotiations in Moscow in 1924 and 1929 showed me in a terrifying way the bolshevistic nature. At our second visit we had to dissolve our branch office in Moscow, because our Russian employees were thrown into unbearable scruples of conscience because of being spied upon by the GPU. The collapse of the liberal bourgeois parties in Germany to which I adhered, convinced me that Germany had to choose between national socialism and bolshevism. Under these circumstances I considered it the right way to make the attempt to come to terms with national socialism in order to save the German people from the chaos.

How formal these concessions were, to what an extent they were opposed to my innermost feeling and how little I was trusted by the party circles, is proved by my relations to the Gauleitung in Frankfurt which grew worse and worse. The omity of the Gauleiter was a continual danger for me, for my family and in a certain sense also for the firm. But I felt responsible for the firm and its thousands of workers and

employees and therefore I believed it my duty to make these concessions.

I spoke just now about the formal concessions which I considered necessary, but I want to emphasize that I never made any concessions in such fields which in the beginning I designated as my principles of life: respect for men and love for peace.

Numerous affiants confirm that I tried, by even frequently endangering myself, to help those persons who had to suffer under National Socialism because of political and racial reasons. I never did, approved or tolerated anything that would violate the dignity of my fellow-men. I never supported anything that was aimed towards war. When in March 1939 Hitler entered Prague, in Dusseldorf the final record on the German-British industrial discussions was edited in which I had assisted. The English industrialists were just as surprised and shocked as we were. I felt completely deceived by my own government. This step was bound to shake the international confidence in German policy completely. Already at that time I saw the danger which might follow such an action. I recognized that a war would destroy the work of my life and I looked to the future with fear and distrust. Here is the origin of all my apprehensions of 1939 - I did not believe in war-as is proven by my actions in the private and business sphere-but I feared war. I had no connections at all with persons who knew Hitler's aggressive plans.

I did not use the war to take away something from other persons unlawfully or to procure something for my firm without being convinced that it was right. Nobody was harmed by the transactions in which I participated. It could not be my interest to endanger Farben's reputation and my own, by measures which might have been doubtful or even criminal from a moral or business viewpoint. All enterprises in which Farben by my participation acquired interests in the course of this war benefited through Farben, and all these enterprises with regard to which the Prosecution accuses me of plunder and spoliation were

only able to keep up their production and sales because Farben supported them by its capital, its technical experience and its knowledge. Many a worker and employee, whether Frenchman or Pole will perhaps still remember today, that it was due to Farben that he did not lose his job during the hard war times. I think that in the occupied territories I never forgot the responsibility which we owed to the economy and population of the country concerned. Our personal relations, especially with the French, were undisturbed all through the war. It was impossible to assume in 1941 that Marshal Pétain whom President Roosevelt had distinguished by a special ambassador and who as defender of Verdun was world-famous, later on would be considered as traitor by the French. In my opinion, a law signed by him could never violate the interests or the honor of France.

The collapse in 1945 also caused my complete psychic breakdown. Only who personally experienced the last months of the war in Germany, the complete disorder and the endless terror of the air raids, and whoever was responsible for several thousand staff-members in inadequate air raid shelters, whoever was permanently endangered by the terror of the Party-authorities during the last stages of the war, only he is able to understand the psychic emotion caused by these events. Those emotions were just like a physical injury. It caused weakness and inferiority complexes, above all, however, in despair and resignation. In that state of mind I was arrested on May 7, 1945. The High Tribunal is well aware of all further matters.

If, in conclusion, I look back on the many years of my professional career, if I recall again all that the evidence reminded me of, if I examine and evaluate all my intentions and actions I can say with sincere conviction:

I never intended anything wrong and I always acted in accordance with my sense of duty and my conscience. I believe and trust that the juridical examination of my actions



by the High Tribunal will also show that I did no wrong.

THE PRESIDENT: Professor Hoerlein:

PROFESSOR HOERLEIN: Mr. President, Your Honors: As a layman with respect to legal matters, I believed that the Prosecution would give facts in their final plea, which at least, in their own opinion, would give them the right to claim individual guilt. Instead, the Prosecution merely mentioned my name again in connection with the general charge of criminal medical experiments, ignoring the result of the presentation of evidence, and without giving any concrete facts.

It is so simple to make charges, but it seems to be difficult to acknowledge errors. What is my case really like? My life work was research, and its application to the health problems of the whole world. I worked for humanity, for the honor of German Science, for the benefit of German economy, and my firm, and for my family. There was no conflict of interests and no conflict of conscience in all of these goals.

The Elberfeld Plant which I organized for pharmaceutical purposes, and which I managed, was the smallest unit of Farben which was taken care of by a technical Vorstand member, but I would not have traded with any of my colleagues, and I refused another position which was offered me, which was a larger sphere of work, because the tasks which I had in Elberfeld were unlimited and were devoted to one of the greatest problems of humanity, namely, health.

A great American inventor, Victor Heiser, who travelled in the Far East for 20 years, for the Rockefeller Foundation, described his tasks as follows, in his book, "An American Doctor's Odyssey": "My choice was to open the golden window of the East to the Gospel of Health; to let my knowledge to those teeming millions who had no voice in demanding what we consider inalienable rights, should also benefit by the discoveries of Science, and that in the end they, too, could have health."

The search for drugs to kill tropical diseases was one of our aims at Elberfeld. I shall mention merely one of these problems, our struggle against malaria. Hundreds of thousands of soldiers of all Nations in this war, have had their lives and health preserved by Atabrine, and millions of people may in the future be saved from death of malaria by this intervention of the Elberfeld laboratories.

Atabrine is today internally recognised as superior to quinine. In future, I hope better drugs may be found, but no one can deny the accomplishment of Farbon in proving that malaria, a disease from which a third of mankind is suffering, can be conquered by a produce which can be produced in any quantity desired.

Our research was carried out on a basis of private business, - and I do not want to lose this opportunity to thank my firm for entrusting to me the funds to carry out our work, and I also want to thank my Vorstand colleagues for letting me work as I wished and not calling upon me for other things.

Heiser's farewell letter to the President of Rockefeller Foundation contains the following sentence, and I quote:

"The only possible reward for a life devoted to the public branch of the Medical profession are, of course, such professional standing and respect as one may earn as a keen satisfaction of unselfish service to others".

I am proud that many scientists of international reputation have paid tribute to my work before this Court. The Prosecution, however, in their opening statement called me and others of my colleagues, a "damaged soul", and an "architect of catastrophe". They accused me of crimes against humanity, and tried in their case to prove this monstrous statement. I hope, however, that the Tribunal has been convinced by the presentation of evidence by my counsel, that these charges are unfounded.

I am, therefore, awaiting your decision with calm and confidence.

THE PRESIDENT: Dr. Ambros:

DR. OTTO AMBROS: Your Honors, when the Prosecution's plea yesterday showed once more that the Prosecution, in spite of the Defense evidence, hold to its hypotheses, I realized that the lack of understanding on the part of the Prosecution lies not in realities, but deeper. It does not understand the circumstances, and does not understand my feeling and attitude.



(Dr. Ambros)

For me as a chemist, my highest goal was the scientific work for all humanity and the earnest struggle to supply Germany with vital goods. That the totalitarian state seized the results of this work for its plans I learned only much later. At that time, however, my work was not subject to my own free will. Only in working on technical projects for the benefit of all, could I, as a chemist, find inner satisfaction and the fulfilment of my profession; in the laboratories, in the planning offices and in technology I sought and found my field of work, not in political or military planning. I was not a politician; I was not a military man, or an official. I was engrossed with my work as a chemist, and this work resulted for me from the structure and the traditional development of chemistry. It was only the state which forced this work into degrees of priority to measures of expediency and demands for expansion. This was foreign to me, but I could not evade it.

I almost envy the people, now that I have been in this trial, who never ran the risk of becoming the focal point of such state interests. If, during the course of the war, I had to use my technical experience and knowledge in other countries too, I was not thinking of plunder and spoliation. On the contrary, I built up there too. I never wanted material gain or profit, and I never got it. I felt that I was working together with all of the workers. All of the deeper am I affected by the charge of having committed crimes against humanity.

When, at the end of 1946 I was arrested by order of Nurnberg, I had no idea of becoming indicted, and I therefore believed that everything could be quickly cleared up by a frank discussion. That, for example, I would be connected with the atrocities of the concentration camp Auschwitz, I could not understand. I was shocked when I learned for the first time from documents in other trials, of the events in the concentration camp Auschwitz, but I cannot deal with this charge of the indictment in any other way, than to say simply, I learned of all of these things only

after the collapse. The indictment refers here to things which happened outside of my sphere of work and which are so horrible that even today they surpass my powers of imagination.

I must deny emphatically any causal connection with these things. My conscience is clear.

I trust in your just judgment.

THE PRESIDENT: Dr. Buergin.

DR. BUERGIN: Your Honors, to serve technology, and to be of service to humanity was the slogan of my work. In the 1914-18 war I served the Fatherland as an officer. After the war, we had to work to regain what had been destroyed and lost, and together with millions of Germans, who had made enormous sacrifices of goods and blood, we had to regain for German work the old respect inside and outside of our borders. This matter was the primary task of industry capable of export and specifically of German chemistry. Export is a vital question for Germany.

During my completely non-political career as a chemist, as a plant leader, as a Vorstand member of Farben, I worked according to this guiding thought. When in 1936 I took over the Bitterfeld plant as Manager and Vorstand member, in view of the enormous social activities of I.G. I received a rewarding task, not only in the technical field. The outbreak of war, a year later, unfortunately suppressed one's own initiative in all fields to a large extent. Nevertheless, the foreign workers who took the places of the drafted German workers, were taken care of as well as possible.

During my work in France after the war, I learned from conversations with French workers, who had been employed in Germany, that they liked to think back to the time when they were in Germany, and that they had returned home with increased technical and language knowledge.

The picture that the Prosecution has drawn of the circumstances under which the foreign workers lived, is completely distorted. Your

Honors, an inspection of the place would have shown you its real conditions best. Besides, we must not forget that the constant air raid dangers in the last years of war brought Germans and foreigners together in their common distress, - brought them closer together than it would appear today.

After a thorough examination of my former work, which I have had ample opportunity for here, I may say, that I feel free of the guilt which the Prosecution is trying to prove against me. I am convinced that the Tribunal will judge my actions justly, and will give me an opportunity work in freedom with all men of good will toward a better future in which I have not lost faith even today.

THE PRESIDENT: Dr. Haeffliger.

DR. HAEFLIGER: Mr. President, Honorable Judges: From Thomas Carlyle originates the sentence, "There is no act more moral between men than that of rule and obedience. Woe to him that claims obedience that is not due both to him and to him who refuses it. God's law is that there is a divine right or else a diabolic wrong at the heart of every claim that one man makes upon another."

It is my tragic error not to have perceived that it was diabolic wrong which was hidden behind the claims Hitler enacted from the German people, and that he and his small chain of conspiring revolutionists deceived and shielded from people as to his aims.

There is no better way to illustrate the nature of an absolute dictatorship than Erasmus of Rotterdam did in the 16th Century with reference to Henry VIII, and other potentates when he said: "How terrible the threats of princes, at the scream of the eagle people tremble; the senate yields; the nobility cringes; the Judges concur, the Divines are damned; the lawyers assent, the laws and constitutions give way, neither right nor religion, neither justice nor humanity avail. Translated to the Hitler dictatorship, how was it possible that he succeeded in the highly developed 20th century to impress his



view upon a great and capable people; solely in this way that he rested in a direct way upon the demagogically aroused masses, and created in them an organization of watchdogs and stool pigeons, which little by little became more and more efficient. It was the army of "small Hitlers" which on ni present, visibly and invisibly infiltrated the whole of the public, as well as the private life, sowing distrust and suspicion between everybody, threatening all those of other opinions in their personal liberty, and which finally succeeded in smothering every free word. This was the ever-growing army which served Hitler as an instrument of his power, he himself being inaccessible and shunning all contact with the intellectual world, and which gradually brought about those conditions which Erasmus pictures so strikingly four centuries ago.

During my detention in the Braeungesheim jail, I wrote a letter dated 26 September 1945, to my friend Dr. Guenther Frank-Fahle, who was in prison too, in which I drew a comparison between our life in Braeungesheim with the conditions of life in the Third Reich, so similar to those existing in the prison.

Frank-Fahle had been ordered by the chief interrogator, Mr. Ritchey, to deliver to him a report about our prison life. My letter was attached as an annex to his very concise report, which, by the way, contains amongst other facts, the incidents I recently related here in the witness box. As time does not permit me to read this letter here in full, I will restrict myself to quoting the following passage:

"What would happen to a prisoner for breaking the prison regulations or obstructing the same? He would probably soon land in a dungeon on bread and water for extra punishment. What would happen to a person who would make himself conspicuous in criticizing and counteracting the Nazi rulers? He would land very soon in one of the ill-famed concentration camps, just like at present he would be found out sooner or later, because in this doomed country there was not even any privacy left.

Nazi functionaries of all kinds poking their noses into the most intimate, private affairs, by the help of secretly questioning neighbors, household servants, employees and so on. Might not this silence imposed upon us in prison be compared with the silence we had to observe in Nazi Germany toward our wider surroundings, in our offices, in public places, where you could not dare to use open language for fear of unknown spies and informers being around, who like the guards of prison, could shunt you on a single course of work, or later on, as is well-known even on account of a political joke or on remarks overheard which could have been interpreted as defeatism?

The story will have to be written how the German people got more and more hopelessly entangled in this plague, by the threat of drastic measures by their rulers, especially of the Gestapo which in time became more and more cruel. And finally it was reduced to a mass without a will and to an object which had to obey and to be silent, just as in prison. Living in Germany since 1909, my mental attitude from the beginning invariably has been not to mix in political matters and to face the German politics from the angle of a neutral observer.

I was fully absorbed by my profession. My acquaintances, and my friends were throughout open-minded, world-experienced men. Is it to be wondered that strong sympathy connected me with Germany, well understood with the other, tolerant, broad minded and peaceful Germany? But all the time it was my view to remain Swiss. After 1933 my situation, however, became increasingly more difficult, in view of the growing narrow minded nationalism and chauvinism. I felt myself watched by small Hitlers who by no means belonged to the circle of the defendants here present. And I, therefore, was glad that after my nomination as a Swiss consul, at the end of 1933, I was able to confirm my neutrality visibly also to the outside. I was well aware that under the Nazi regime the maintenance of my nationality meant that I had to sacrifice all hopes to candidacy as a successor of my senior colleague, Dr. Weber-Andress, and to be entrusted with the responsibility of the chemical sales combine of I.G. when he, as it was supposed, would retire in 1936. But by no means a reproach is made thereby to the I.G., for it was entirely in my own decision to remove this obstacle by a naturalization.

Besides, it is probably a rare case that a man in my position in any foreign country could be active for over thirty years without acquiring the citizenship of his host country. Furthermore, it would be a complete error to assume, for instance, that the I.G. sought an advantage for itself to make use of me for being a foreigner. This, in



fact, never happened. If, in 1939, Dr. Krueger, in order to help me in my fight to retain my Swiss nationality, on his own initiative, had to take this step of a cloaking maneuver on my behalf as set forth in his respective affidavit. This throws a further significant spotlight to the kind of ideas you had to resort to under the prevalent conditions in the Third Reich.

As the only foreigner in the Board of I.G., it would have been naturally quite impossible for me to oppose any decisions or measures deemed to be necessary in the national interests. The very fact that during all those critical years I never had cause for the slightest suspicion that the I.G. Board in an alleged conspiracy with Hitler was working up to an aggressive war is a further proof for the absurdity of this allegation, as pointed out already by my defense counsel, Dr. von Metzler, in his final plea. How could I possibly, as a Swiss consul, let myself knowingly to concur in the preparation of an aggressive war which, in all probability, would at the least extremely endanger the country which I had the honor to represent officially?

I have never felt, of course, as an instrument of Hitler not as a capitalist, but all the time as a worker in the services of the I.G. Farben.

I was proud to have been assigned in it the field of activity which permitted me, as an honest businessman, to contribute a modest share to a friendly and peaceful international cooperation. Neither greed for money nor for power were the motives which stimulated me, but a joy and the enthusiasm for the task allotted to me. If any man must have known that a war means not enrichment but impoverishment, they were I and all my colleagues. And now, at the end of a laborious life, I am facing monstrous charges.

Honorable judges, I know you will not let yourself be influenced by a systematic and poisoned attack here. I confide in your justice and I am looking forward to your verdict with calmness and a clear conscience.

THE PRESIDENT: Dr. Ilgner.

DR. ILLNER (Defendant): Your Honors, after more than three years as a prisoner I am allowed to speak my final words today. It was a long and bitter probation period of which, however, I now look back without bitterness and resentment. In such days when a great part of humanity has suffered, and is still suffering, the misfortune of the individual is of minor importance.

During the last years the American Inquiry Committee preparing this trial was very much interested in my person, at least from the beginning. For a long time I could not find out the reason. I only suspected it; I know it today. The motive is to be found very far back and goes like a red thread through the last twenty years, beginning with the press campaign against Farben in New York on the occasion of the foundation of the American I.G. Chemical Corporation, in 1929, in which I took an active part. That was about the same time when Farben supported in a decisive way the foundation of the German Ford plants in the Rhineland by the Ford Motor Company, Detroit. At that time the same Frank Garwan, who in his capacity as Alien Property Custodian confiscated the entire patents of Farben during the First World War, wrote the well-known severe article "Guns Bono?" directed against Farben in the New York Times.

A few years later, when in 1933 the boycott campaign was started against the exports of German industry, Farben was exposed to especially severe attacks in the United States, again by the same circles. One year later, in 1934, Ivy Lee, the publicity advisor of the Standard Oil Company of New Jersey, who had also advised Farben, was slandered by a competitor in the American press campaign, this time also directed against my person--started again like a heavy thunderstorm. After a pause of many years this campaign was renewed even more intensively when Great Britain entered the war. In 1940, namely, a pamphlet was published in New York entitled "The Apocalyptic Horsemen of I.G. Farben." After the collapse in 1945, the ghost of this pamphlet

noticeably and unnoticeably influenced the inquiry work of the Bernstein Committee. The report of this Bernstein Committee, however, was the basis of the indictment.

The Nurnberg trials had a high ethical aim: to give the world a new and better justice. Whether this aim has been achieved, or what has been achieved, in reality, will be judged later on by history. Today, three years after Armistice Day, the time probably has not yet come to judge the dramatic events of the past decades; however, these cannot be understood or measured by human measure alone--as large as this may be.

The conqueror considers the world from another angle than the conquered does. But with respect to one thing the advantage is on the side of the conquered: his eyes have seen more danger and more misery than those of the conqueror; his mind is keener and more vigilant towards the future. The German people have been living in a crisis practically uninterruptedly during the last thirty years. What is happening in the world today with regard to many things--we know it only too well--is almost a repetition of our own experience.

Everybody who lived in Germany during the past years knows how from the bottom of our hearts we longed for civilized legal conditions and normal relations with the rest of the world, to get away from the situation created by this revolutionary dictatorship. This good will, this front of people of good will, was especially strong in the internationally-oriented industry. In the circle of my associates in I.G. Farben there were many people of good will. It is true: nothing is perfect in this world, and all men have their weak sides, even more so in a period of such a confusion of all standards. However, I was and am happy and proud that I was a member of the Vorstand of an enterprise which even in the past darkest years of German history and in spite of the grave burden which I.G. Farben, too, had to bear, always held its shield in clean hands.

We know what I.G. Farben meant for the German people. Our exports



were a decisive contribution towards feeding and clothing the German people. In the best sense of the word--we belonged to the German people. No German shareholder had a holding of as much as one per cent of the capital stock; more than half a million workers, employees, small shareholders, savers, and deserving pensioners looked to their supporter: I.G. Farben! I have always considered myself to be an industrialist who, above all, was responsible for the well-being of those men who were entrusted to him.

In addition thereto I considered it the task of my life to bring about international understanding in economy, that is, cooperation based on equality and peace. Therefore, the charges of the Prosecution with regard to Norway affects me especially. One does not treat one's friends badly, and if today the Norwegians were to condemn my actions during the war, then Norsk Hydro would not take care of my wife and my children in such a kind way and send packages to them, as they do.

As regards the present economic situation of Norsk Hydro, and in order to supplement my statements made in the witness stand concerning the termination of the magnesium plant commenced during the war and the expansion of the water-power plant Vaar, I wish to refer to a press interview given by Director-General Eriksen of Norsk Hydro, which was published only a few days ago. Eriksen states that his plant is now in a position to supply the world demand for nitrogen as far as it was supplied by Farben before the war. But this was possible only by the extension of the water power bar with the assistance of I.G. Farben during the war.

If today, as the Prosecution has stated, a better and fairer world is to be built, that cannot be done by trying to defame decency in the eyes of the world.

I conclude my statement with the honest desire that the respect of human beings for one another may be the basis of collaboration of the peoples throughout the world in a peaceful competition and that the

conquered may see in the enemy of yesterday the face of his brother of tomorrow. This is the only way, in my opinion, in which humanity can come from the chaos of today to the order of tomorrow.

THE PRESIDENT: Dr. Jaehne.

DR. JAEHNE (Defendant): Your Honors, a great American, Jefferson, once said something to this effect: The meanest robbery is the robbery of honor. It gives the robber nothing and takes everything from him who is robbed. To defend oneself against such a robbery is a moral duty for the individual and even more so if the individual belongs to a group which was in high repute throughout the world.

I am personally mentioned only once in the whole indictment, as a member of the big Beirat of Reichs Group Industry. That is no doubt not a crime in itself. What was presented by the Prosecution in the trial and in the final plea yesterday, has been made so clear by my defense counsel, Dr. Pribilla, and by my testimony from the witness stand that I have nothing to add to it factually or legally. Only a personal remark. In the long time that I was in custody I have had an opportunity to think about my life, my principles and my actions. As a technical man I am for clarity, and I hold with sober facts; either a thing is true or it is not. And I can only say: As the Prosecution presents it, it was not either in Hoechst or in I.G. Farben. One could become bitter when one sees how one acted in former times and how one is now treated and what names one is called. And yet we human beings must not lose faith in a moral world order and a future, better world, if we are not to despair.

Your findings, Your Honors, can contribute to the formation of this better world, but it might destroy the germ of it. After all, it is often the small things, the almost unnoticeable things, that really change the world. They last; the obvious things are effective only in the present. Thus, now, in spite of all the accusations of the Prosecution, I am convinced that the quiet work in the research laboratories of Farben will continue to have its effect when the nonsensical charges in this trial have long been forgotten.

THE PRESIDENT: We will take our recess a bit early.

The Tribunal will rise for the next fifteen minutes.

(A recess was taken.)



THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Dr. Kuehne?

DEFENDANT KUEHNE: May it please your Honors, I was nine years old when on the estate of an uncle I found a book of chemistry and from then on my decision stood firm: I was going to become a chemist; and I became a chemist and, despite all opposition raised against it, I believe I may say that I became a good chemist and above all, I became a passionate chemist. I couldn't imagine anything better than to hold my chemical instruments in my hand or later on to work in the factory planned on the lines of new production plans.

At a very early date I was given an executive position in a small plant and from that time on my special care was devoted to my workers. From my early youth I always esteemed every person who was capable of achieving anything, irrespective of the position he may hold, and my workers felt this, too. Other things outside the sphere of my work and my music I did not bother about. I was anti-militarist. I recognized, and still recognize, that an army is an expensive and dangerous toy for generals and politicians. I hardly concerned myself with politics and, above all, I detested party politics. It was only twice in my life that I came into close contact with party politics, and in both instances it was to my own personal disadvantage. The first time it cost me my position when, for reasons of fellowship, I defended the Social Democratic sentiments of one of my workers; and on the second occasion I succumbed to the same illusion, that millions of other people succumber to, but this time it was a tragic destiny, not only for me personally but for all my nation and people because we could have no idea what course of development that one man would take when we thought to be the savior of Germany from political and economic chaos.

Your Honors, with the best will in the world it is impossible for you to appreciate the sentiment of my people that it necessarily had before 1933. Your Honors live in a rich country full of prospects and development. You are not surrounded by neighbors who envy you for your industrial and political expansion and are suspicious of it. What the German people felt and why Hitler came to power was best expressed by the great German poet, Richarda Bach. She herself was a militant opponent of Hitler and she wrote:

"Hitler would not have been able to hold such a numerous and such an enthusiastic and passionate following if it wasn't for the fact that the German people, downtrodden in the mud by its enemies, hoped to be able to find a resurrection through this man. For many years it had felt degraded and helpless and it had borne the contempt of its opponents; and now all of a sudden in its own midst it heard a proud and strong, even provocative voice. The degraded people took a breath of relief. The liberator, the savior, had come. The movement that now began to follow and surround Hitler seemed to most people as though its objective was to regain for Germany the esteem that it had formerly held."

May it please Your Honors, it was neither the German people nor its industry that, after the awful and atrocious experiences made in World War I, desired a new war and, least of all, I. G. who, in the last war had lost its great export business. This has been justifiably emphasized often. In the New York Herald Tribune of 4 October 1947 it reads, as an excerpt from a speech held by the Secretary of the Army Forrestal, as follows:

"Mr. Forrestal denied that there was any historical validity for the Marxist Theory according to which industrialists desired war for the sake of material gains. Mr. Forrestal said that there was no group anywhere that was more in favor of peace

than the industrialists."

The American industry at the present time is undergoing to a much greater degree the same that we underwent at the time of rearmament: that is to say, demands concerning air raid protection, mobilization plans in the event of war, counter intelligence and much more of the same type. It is even experiencing the stock piling of atomic bombs without any industrialists being charged on that account for participating in aggressive warfare. And you have to bear in mind, Your Honors, there is no nation on your country's borders which is a menace to you industrially or ideologically, or that envies your industry.

The problem of taking in foreign labor was one you never had to deal with. Streams of workers go to your rich and wealthy country. You cannot possibly understand the sentiments of a people that is pressed into a small expanse of territory and over and over again sees that its efforts for improvement of life are taken from it. If it expands industrially then there are other countries immediately stepping in with tariff protection and depreciation of currency. Its colonies were taken from it without any hope of regaining them. It is only in poor countries, only in countries whose hope for reconstruction is being utterly taken that dissatisfaction and national movements arise.

In view of the suspicion that the party entertained against me as a former Free Mason and for the reason that after a short membership in the Party from 1933 up to August 1933, I was actually expelled from the Party and was placed under police supervision I cannot very well be called a co-conspirator of Hitler in a war of aggression in the critical times involved.

It is a matter of course that throughout the war, being a German, I did my duty to my people and country to the extent that I could reconcile this with my conscience, with religion



and humanity. While acting in my position I retained this attitude even under such circumstances where personal danger was involved for myself. This attitude was such a matter-of-fact thing in my case that it never even occurred to me that I should procure testimonials for later evidence.

I trust, Your Honors, that I have been able to convince you of my sentiment and attitude even in instances where I have not been able to produce documentary evidence against general charges raised by the prosecution. I ask your Honors to pass an early judgment. Just as some other of my colleagues, I have reached that phase of life which the Bible designates as being three score and ten. I have been under arrest for fourteen months and every day that goes becomes more and more irreplaceable and what has been inflicted on us physically and morally cannot be compensated for. The point now is to have our honor reinstated which only yesterday was again debased in the eyes of the world by unfounded charges raised by the prosecution and of which there is a saying: "It is better to lose your life than your honor." I confidently hope that Your Honors will reinstate the honor that we held.

THE PRESIDENT: Dr. Wurster?

DEFENDANT WURSTER: May it please the Tribunal, there is little that I can add to the words of my defense counsel and to my own explanations given in the witness stand, but there is one thought that I would like to express at the end of this long trial.

When in June of last year when I was hospitalized in Ludwigshaven, the indictment was served upon me, and even more so when at the end of August last year I was transferred to Nurnberg, I sometimes had to overcome a certain feeling of bitterness.

I hope that the presentation of evidence by my defense counsel has shown that in my practical actions I was never guided

by the idea that the life and the future of human beings could be built on a basis of brutal force and of wrong-doing. Especially the selection of contemporaneous documents relating to the treatment of foreign workers at Ludwigshafen presented by my defense counsel should show - I believe - one thing: during the years of my life and of the history of my country which were difficult beyond saying I endeavored with all my strength to stand for the idea of humanity even during the hard years of war. I may be permitted to say that I succeeded in doing so within my possibilities. During the year of war, 1943, the synode of our so-called confessional church emphasized among other things: "We should not forget those who are almost helpless. Public opinion should not influence a Christian in this respect. Our brother is whoever is helpless and needs our assistance without any distinction of race, nationality, or religion." I regarded these words as more than an empty phrase. The hard reality of life meant, however, continuous struggle in order to achieve the best of the day.

After the German collapse, upon the order of the occupation authorities and with the full confidence of the working people and their representatives, I started to remove the consequences of the war in our heavily damaged factory at Ludwigshafen in order to create a new basis of peaceful existence for those people who had always shown loyalty to the factory and who stood before its ruins full of worry. In spite of all daily difficulties and privations the hope increased from month to month that I would be permitted to realize my ideas of the social and economic future of such a big factory without all the obstacles that had been opposing this work during the preceding years.

All of a sudden the indictment took me away from my work of reconstruction that had lasted for more than 2 years, without my previously being given any opportunity to state what I had to say with respect to the issues of those terrible accusations.

This is something that I could not understand, and even today cannot understand, and this is the root of the bitterness which I mentioned at the beginning, and yet I have learned during the course of this trial, to overcome the feeling of bitterness for being torn out of my work. I have learned to understand that it is impossible to build up a better life and to heal the wounds of the past in the shadow of these accusations.

This is not only true with respect to my own person, but also applies to the whole factory of Ludwigshafen to which I belonged as a chemist for almost 25 years, and the social management of which was entrusted to me for nearly ten years.

I recognize that it is my duty also towards this work to stand here in my own behalf, and to remove the shadow of these tremendous accusations, not only from my own person, but also for my former collaborators in the whole factory.

I hope and I am firmly confident that my Defense Counsel and myself succeeded in doing so, and that is the reason why I anticipate your verdict, Your Honors, with full confidence and trust.

The PRESIDENT: Dr. Duerrfeld:

DR. DUERRFELD: Mr. President, Your Honors, since the collapse, the name of Auschwitz is closely connected with the concept and idea of crime and destruction, and any decent German upon hearing this word is covered by the most profound shame, and the shame is so great that even those people who know the name of Auschwitz being that of an I.G. Works, had quite a different meaning before the collapse, even these people hesitate to have any contact with that name, and this is understandable from a humane point of view. It may however, seriously prejudice the finding of the truth, if propaganda and an overenthusiastic indictment endeavors to make the demarkation lines between the two scientific spheres, that is the I.G. Works and concentration camp. Therefore, in this regard, I am grateful to this



trial, and particularly grateful to my counsel, Dr. Seidl, that it has been possible to clarify an unimpeachable manner what was actual truth, and is actual truth. Concentration Camp and I.G. have been too entirely spheres, two different spiritual worlds; outwardly and manifestly they are joined by the same name, but there is a deep abyss between the two. Over there you have the concentration Camp; here you have the I.G. Plant; Over there you have destruction; here you have reconstruction by I.G. There orders of lunacy; here you have a fine creation of achievement. Over there you find hopelessness; here you find the boldest hopes. Over there you find degradation and humiliation; over here you find concern for the individual man. Over there you find death, and over here you encounter life.

I am grateful to my destiny, for permitting me to contribute my work in clarifying the clear demarkation line between the two spheres. Of course also, in view of the fact that it is necessary for me to defend the Honor, not only of myself, but the honor as well of my four children, and particularly also for the sake of the thousands of people who contributed their work to I.G. and myself personally.

I am deeply distressed that there are innumerable people, Germans and foreigners, who are now under suspicion just for the sake of this name, "Auschwitz", suspicions of their being collaborators of a crime, just merely on the basis of the fact that they have no idea, and that in good faith their work to this I.G. work.

For three years in conjunction with my name, I struggled like a soldier by order of my superiors in behalf of this I.G. plant; I struggled with ideas. For my concern and my enthusiasm for three further years now I have suffered for the sake of this same work. I used the word, "I suffered", not in order to complain, but for the sake of this work. I was overcome by deprivation, by need and disease, but faced all of this because I did not make life easy for myself.

My own conscience has been the most sharp of all prosecutors, and when bringing up now statements of facts concerning the actions of the concentration camps there were always new questions that my conscience placed before me. As far as I myself and my directives are concerned, the answer was and remained simple. I did nobody any harm, nor did I order anybody to be harmed. I deprived nobody of liberty, nor did I order such deprivation of liberty. I did not mistreat anybody, nor did I order anybody to be mistreated, and I think there was nobody in this plant who did more work than I did. Nobody lost life or health pursuant to directives issued by the Plant, and wherever within the sphere of jurisdiction of the Plant I saw or heard of an injustice I destroyed it in its very roots, and beyond this statement, I myself tortured myself for many weeks and many months and I asked myself, "was the fact that I had not sufficient knowledge of things, because I had perhaps been negligent, wherein I might possibly have omitted doing something that should have been done, "on my part, but also on this point I have now gained clarity and truth.

It is a fact that mistakes have been made, technical and mistakes of organization, and surely it was not possible for me to see and hear everything, as the technical chief of an enterprise employing 30,000 people and covering 10 square miles. I could not possibly have been everywhere. Such a man has many tasks and labors in his duty. But as far as the charges of the Prosecution against me are concerned, I feel free of guilt in general. Not even today, do I feel myself guilty of any sin of omission. On the contrary, I think that it was not a little that I have contributed in favor of people who were placed in my charge. There are hundreds of letters and affidavits which corroborate this belief of mine, and who actually only brought it to my attention for the first time. There was not one single soul who due to anything I did, gave up life or health, and I do not know of any single case where I might have

have acted differently, or how I might have acted differently.

Obviously the man supervising, and critical visitors did not know that either, because nobody told me about it. There were many hundreds of prominent visitors in the plant, superior I.G. officials, executive engineer, technical commissions, the commission of all leading Construction engineers, the Transport Commission, executive men of the Social Welfare Department, many works chiefs of other I.G. plants; furthermore, the works was visited by hundreds of chiefs of large industrial enterprises, by research men, and scientists. There were military men and officials there, generals and ministers and an innumerable amount of supervising officials and agencies. Further there were prominent members of many European states; there were Frenchmen and Belgians, Italians and Croatians, Czechs and Swiss; there were private and official delegations; there were members of legations and of the Geneva Red Cross.

Your Honors, there were many who grieved over the fate of the prisoners, but there was not any single one of these hundreds of intelligent and critical visitors who ever raised any criticism or any reproaches or even only any misgivings as far as our work was concerned and our social welfare attitude, but we heard was thanks and appreciation. Are all of these people actually to have been blind?

I have before me Your Honors, the book of a former inmate of the Monowitz Camp, our Camp IV, entitled, "Devil and Damned", that was published last year in Switzerland. The name of the author is "Kausky". He was a political persecutor, being a social democrat. I do not know him myself, but I esteem him for the sake of this book, not by any chance on account of the fact that throughout the



entire book, which deals with Camp IV, and with the I.G. not one single serious charge or complaint is raised against Farben, because there is not the name of any I.G. single member named in this book, or pilloried in this book, although he does deal with many SS people, but I esteem him because it offers a psychological analysis of the deep tragedy of the life of an inmate. It is most depressing, for example, to read the following statement and I now quote, page 175:

"In his specific job, each one pursurs his own interests without consideration to anyone else. The camp because the high school of egotism. The more intelligent people saw much and learned much in the camp. They became more intelligent, they became more clever, but nobody became a better man for that. Life in the camp was far too hard and unexpectedly were faced by a situation in which there was a collision between our own and alien interests. There will be very few people who are capable of saying of themselves that they always and in all situations obeyed the categorical imperative, and there is presumably not one of us who survived who is entirely free of guilt."

Is this not a key for as many testimonials to be remembered by inmates?

I have no hatred against those who testified here against the Farben plant, Auschwitz, and the spirit that prevailed there. I well understood, and only too well, that they were embittered by a hard destiny, which, however, was not within the responsibility of I.G. I feel only too clearly, and it is the case today, better than at any other time, that the world will not achieve its aim of peace unless men learn to forgive one another.

THE PRESIDENT: Dr. Gattineau.

DR. FREDERICK GATTINEAU: May it please Your Honors, the facts that refute the charges of the Prosecution have been presented by my counsel. I merely wish to add a few words that may possibly show my personal attitude. I have retained the humanitarian ideals of the young student throughout my professional life. I had aimed at opposing radicalization in politics as well as in my personal sphere. I continued in this effort even after the Weimar speech had broken down and the idea of cooperation among the young conservative powers and their constructive energy in the Conservative People's Party had failed.

This attitude nearly cost me my life. Therefore, feeling the responsibility towards my family, from 30 June 1934 on I withdrew from all political activity and devoted myself exclusively to my profession. Therein I was guided by the principles that had been taught me by men like Bosch and Duisberg. Wherever I was given the task of leading followers, I have tried to solve this problem by combining the economic effect with the social rise of my staff. Today, at the end of the trial, I am convinced, as I was at its beginning, that none of my actions constitute a crime according to any law that I know of.

Therefore, I cannot but join in the motion of my defense counsel.

THE PRESIDENT: Dr. von der Heyde.

DR. VON DER HEYDE: May it please Your Honors, to begin with in the course of this trial I was faced with the question, "Am I guilty or not Guilty" in the sense of the indictment. On the 14th day of August, 1947, you, Mr. President, addressed this question to me in this same courtroom. At that time the question primarily was one of juridical significance. Not knowing the evidence in detail that the Prosecution was going to introduce, but supported by my own conscience, and I gave you the answer, "Not Guilty".

In conjunction with Herr, Dr. Koffmann, and I wish to avail myself of this opportunity for thanking him sincerely for the excellent help and aid he gave me, - I believe that I am able to prove that the

statements I gave you on the 14th of August, 1947, were justified, but there was a second time that I was faced by the same guilty, "Guilty or Not Guilty". This time it was myself who posed this question, and it was my conscience who was the Prosecutor, and my prison cell was the Forum and public present. If a man has been confined for 15 months in a cell, then for him he has many hours more for self-contemplation, and I would say he has much more opportunity to institute trial proceedings against himself than there are actual days of court procedure here in this courtroom. During those hours I endeavored to be able to justify myself into those years and into those circumstances, and it was both from the ethical and humanitarian point of view that I posed myself the question: "Was there any time, anything that today under the same circumstances you would see your way clear to do differently, because now you recognize it to be an injustice or a wrong?"

May it please Your Honors, even in those proceedings held by myself with my conscience, I came to the same result. I do not consider myself guilty in the sense of the Indictment.

THE PRESIDENT: The Tribunal has called the names of all of the defendants who have indicated a desire to speak on their own behalf. If perchance any defendant has since concluded that he would like to address the Tribunal, we shall be glad to afford him that opportunity now.

The Tribunal has heard the evidence in this case, the arguments of counsel, and the personal statements of the defendants who asked for the privilege of addressing the Tribunal.

This long trial began 14 August, 1947. It has now come to a close. At the end of this session the Tribunal will go into recess to deliberate upon its findings and its judgment. Counsel and all parties concerned will be given due and timely notice when the Tribunal has reached a decision, and is ready to make public announcement of its findings.

In the meantime this Tribunal is in recess.

(Tribunal in recess until further notice)



Official Transcript of Military Tribunal VI,  
Case VI, in the Matter of the United States  
of America against Karl Krauch, et al, defend-  
ants, sitting at Nurnberg, Germany, on 29  
July 1948, Judge Curtis Shake, Presiding.

THE MARSHAL: The Honorable, the Judges of Military Tribunal VI.  
Military Tribunal VI is now in session. God save the United  
States of America and this Honorable Tribunal.

There will be order in the Court.

THE PRESIDENT: You may report with respect to the attendance  
of the defendants, Mr. Marshal.

THE MARSHAL: May it please your Honors, all defendants are  
present in the court.

THE PRESIDENT: The Tribunal has received unofficial informa-  
tion of the terrible tragedy that occurred last evening at Ludwigs-  
hafen, and I am sure that I speak for the Tribunal, as well as for  
all who are assembled in this room, when we express our sympathy for  
the deceased and pay a tribute to their memory, as well as to the  
families of those who have suffered in this unfortunate incident.

(The assemblage rose in silent tribute.)

You may be seated.

Dr. Dix.

DR. DIX: May I express to you and to this Tribunal our heart-  
felt thanks, and the most heartfelt thanks in the name of these men  
here, in the name of the defense and in the name of the unfortunate  
sufferers.

THE PRESIDENT: Pursuant to an order of 6 July 1948 this Tri-  
bunal has been reconvened for the purpose of publicly announcing its  
judgment in Case 6, the United States of America vs Carl Krauch, and  
others. Signed copies of the judgment have been deposited in the  
office of the Secretary General. If there are variances between the  
transcript of the proceedings and said filed copies of the judgment,  
the latter will prevail and the Tribunal hereby directs that the



transcript shall be corrected accordingly.

Judge Hebert will begin the reading of the Judgment.

JUDGE HEBERT: The United States of America, Plaintiff, vs  
Carl Krauch, et al.

Organization of the Tribunal:

United States Military Tribunal VI was established pursuant to Ordinance No. 7, promulgated on 18 October 1946, by the Military Governor of the United States Zone of Occupation within Germany. The members hereof were appointed by the President of the United States by his Executive Orders No. 9868, dated 24 June 1947, and No. 9882, dated 7 August 1947, respectively, and were designated as Tribunal VI and organized as such by Headquarters EUCOM General Order No. 87 dated 9 August 1947 and effective 8 August 1947. On 12 August 1947, this cause was assigned to the Tribunal for trial by the Supervisory Committee of Presiding Judges of the United States Military Tribunals in Germany, in conformity with Article V of said Ordinance No. 7, as amended 17 February 1947.

Jurisdiction:

The Tribunal derives its basic authority from Control Council Law No. 10, promulgated by the responsible representatives of the occupation forces of the United States, Great Britain, France, and the Soviet Union in Germany on 20 December 1945. The purpose of said law was declared to be to establish a uniform legal basis for the prosecution of war criminals and other similar offenders, and to give effect to the Moscow Declaration of 30 October 1943, the London Agreement of 8 August 1945, and the Charter of the International Military Tribunal (hereinafter referred to as IMT) issued pursuant thereto.

The Indictment:

This proceeding was begun by the filing of an Indictment in the Office of the Secretary General by the duly appointed Chief of Counsel for War Crimes on 3 May 1947.

The Indictment consists of five counts. It purports to be drawn under the provisions of Article II of Control Council Law No. 10. Count One charges the defendants with the commission of crimes against peace through the planning, preparation, initiation and waging of wars of aggression and invasions of other countries. Count Two charges that the defendants committed war crimes and crimes against humanity through participation in the plunder of public and private property in countries and territories which came under the belligerent occupation of Germany. Count Three charges the commission of war crimes and crimes against humanity through participation in enslavement and forced labor of the civilian population of countries and territories occupied or controlled by Germany, the enslavement of concentration-camp inmates within Germany and the use of prisoners of war in war operations and illegal labor. It also charges the mistreatment, terrorization, torture and murder of enslaved persons. Count Four charges the Defendants Schneider, Bueteufisch, and von der Heyde with membership in a criminal organization. Count Five charges the participation by the defendants in a conspiracy to commit crimes against peace. The Counts will be further set forth as they are reached for discussion and determination in the course of this Judgment.

The Issues:

A copy of the Indictment in the German language was served upon each defendant at least thirty days before the arraignment. All of the defendants, except Karl Wurster, Carl Lautenschlaeger, and Max Brueggemann, who were absent on account of illness, entered formal pleas of Not Guilty in open court on 14 August 1947. The Defendants Wurster and Lautenschlaeger subsequently entered like pleas, and Brueggemann was severed from the case and ordered held subject to subsequent proceedings, upon a showing that he was physically unable to stand trial. The Indictment and the pleas of Not Guilty to the charges contained therein constitute the issues upon which the case



was tried.

The Trial:

The trial opened 27 August 1947, and the evidence was closed on 12 May 1948. The case was prosecuted by a staff of 12 American attorneys, headed by the Chief of Counsel for War Crimes. Each defendant was represented by an approved chief counsel and assistant counsel of his own choice, all of whom were recognized and competent members of the German bar. In addition, the defendants, as a group, had the services of a specialist of their own selection in the field of international law, several expert accountants, and an administrative assistant to their chief counsel. The proceedings were conducted by simultaneous translation into the English and German languages and were electrically recorded and also stenographically reported. Daily transcripts, including copies of exhibits, in the appropriate language were provided for the use of the Tribunal and counsel. The following tabulation indicates the magnitude of the record:

	<u>Prosecution</u>	<u>Defense</u>	<u>Total</u>
Documents submitted (including affidavits)	<u>2,282</u>	<u>4,102</u>	<u>6,384</u>
Affidavits submitted	<u>419</u>	<u>2,394</u>	<u>2,813</u>
Witnesses called (including those heard by commissioners)	<u>87</u>	<u>102</u>	<u>189</u>
Pages of the transcript (not including the Judgment)			<u>15,638</u>
Trial days consumed (not including hearings before commissioners)			<u>152</u>

Between 2 and 11 June 1948, the Prosecution consumed one day and the Defense six and one-half days in oral argument. Each defendant was allotted ten minutes in which to address the court in his own behalf free of the obligation of an oath, and fourteen availed themselves of this privilege. Exhaustive briefs were submitted on behalf of both sides.

Interlocutory Rulings:

It is deemed appropriate to call attention to some of the more significant rulings made by the Tribunal during the progress of the trial.

(a) Article VII of Military Government Ordinance No. 7 provides that, "The Tribunals...shall admit any evidence which they deem to have probative value (such as) affidavits," and "shall afford the opposing party such opportunity to question the authenticity or probative value of such evidence as in the opinion of the Tribunal the ends of justice require." Among the guaranties for a fair trial accorded defendants by Article IV of said Ordinance is the right "to cross-examine any witness called by the Prosecution." The Tribunal ruled, therefore, that it would receive affidavits in evidence, subject to the right of the opposing party to test the same by cross-examination, if production of the witnesses was requested and they could be produced for that purpose, and that in instances where the witnesses could not be made available the opposing party might procure counter affidavits from the affiants or submit interrogatories for them to answer, in lieu of cross-examination.

In instances where the witnesses could not be cross-examined, counter affidavits procured, or answers to interrogatories obtained, the Tribunal, on motion, struck the affidavits from the evidence. Consistent with this ruling, the Tribunal also refused to admit, over objection, the affidavits of deceased persons.

(b) During the presentation of its case in chief, the Prosecution offered a number of statements made by defendants prior to the filing of the Indictment. These offers were objected to on the ground that such defendants would thereby be compelled to give evidence against themselves, in contravention of fundamental principles of enlightened criminal jurisprudence. The Tribunal ruled: (1) That, if voluntarily given, such statements were competent as admissions against interest; but (2) that if the defendants making such statements did not take the witness stand and thereby subject themselves to cross-examination, such statements would not be regarded as evidence against the other defendants, but that the Tribunal would limit its consideration thereof to the defendants making such statements. In one instance the Tribunal rejected the purported statement of a defendant upon a showing that the same was given while said defendant was under duress.

(c) In response to a motion filed by counsel for the defendants, the Tribunal ruled that, as a matter of law, a common plan or conspiracy does not exist as to war crimes and crimes against humanity, as these offenses are defined in Control Council Law No. 10. At the same time, the Tribunal held that the acts described in Sections A and B, under Count Two of the Indictment, would not, as a matter of law, constitute crimes against humanity, since they related wholly to alleged offenses against property; nor would said acts constitute war crimes, since they pertained to incidents occurring in territory not under the belligerent occupation of Germany. This ruling will be further noticed under that part of the Judgment devoted to Count Two of the Indictment.

(d) During the trial the defendants were granted rights of access



to the captured Farben papers in the Office of the Chief Counsel for War Crimes.

(e) The Tribunal refused to pass upon a number of motions raising questions of law and attacking the sufficiency of the evidence, since it felt that it would be in better position to determine such matters after it had had the benefit of the final arguments and briefs of counsel and a timely opportunity to review the large volume of evidence. These issues will be determined by this Judgment.

Farben as an Instrumentality:

Counts One, Two, Three, and Five of the Indictment each allege that "All of the defendants, acting through the instrumentality of Farben and otherwise with divers other persons," committed the acts charged therein. It is also stated in Counts One, Two and Three that said defendants "were members of organizations or groups, including Farben, which were connected with, the commission of said crimes."

The designation, Farben, as used in the Indictment, has reference to INTERESSEN-GEMEINSCHAFT FARBENINDUSTRIE AKTIENGESELLSCHAFT, which is usually abbreviated to I. G. FARBENINDUSTRIE A.G., and which may be freely translated as meaning "Community of Interests of the Dyestuffs Industries, a Stock Corporation." The corporation is generally referred to as I.G. in the German transcript of the proceedings and as Farben in the English.

Farben came into being during 1925, when the firm of Badische Anilin und Soda Fabrik of Ludwigshafen changed its name to the present designation and merged with five of the other leading German chemical concerns. From 1904, however, some of these firms had been working under community of interest agreements, and in 1916 they had formed an association council to exercise a measure of joint control over production, marketing, and research and for the pooling of profits. By 1926 the merger had been effected with a capital structure of 1.1 billion Reichsmarks, which exceeded by three times the aggregate capitalization of all the other chemical concerns of any consequence in Germany.

Under the leadership of Dr. Carl Duisberg, the first Chairman of the Aufsichtsrat, and of Dr. Carl Bosch, who succeeded to that position in 1935, Farben steadily expanded its production and its economic power. In 1926 the firm had a staff of 93,742 persons and an annual turnover of 4,209 million Reichsmarks. By 1942 the staff had increased to 187,700 persons and the turnover to 2,904 million Reichsmarks. At the peak of its activities the yearly turnover of the firm exceeded three billion Reichsmarks.

Farben owned or held participating interests in 400 German firms and in about 500 firms in other countries. It also controlled some 40,000 valuable patent rights. The Prosecution denominated the firm, "A State within a State."

Particularly outstanding were Farben's achievements in chemical research and in the practical utilization of its discoveries. Among the many pharmaceutical products which Farben developed and sponsored may be mentioned aspirin, atabrin, the salvarsans. Two of its trademarks, the "Bayer-Cross" in the pharmaceutical field and "Agfa" in photography, are well known throughout the world. In the industrial sphere Farben was a pioneer in the development of the intricate processes by virtue of which dyestuffs, methanol, the plastics, artificial fibres, and light metals are commercially produced on a large scale. The firm played an especially important role in the discovery and development of the processes for making Buna rubber, nitrogen from the air, and gasoline and lubricants from coal. It is noteworthy that three Nobel-prize winners have been Farben scientists, and that the firm's products won nine grand prizes at the Paris Exposition in 1937.

An enterprise of the magnitude and diversified interests of Farben necessarily required a comprehensive and intricate plan of corporate management. We shall here merely sketch the broad outlines of these, leaving details for further notice in connection with particular subjects and problems.

The Stockholders of Farben numbered approximately a half million.

There was an annual meeting, usually attended by financial representatives of groups of shareholders, at which reports were received and considered, capital increases and amendments to the charter were approved, and members of the Aufsichtsrat elected.

The Aufsichtsrat comprised 55 members at the time the merger was effected, but this number was reduced to 23 in 1938 and to 21 by 1940. This body was in the nature of a supervisory board, somewhat comparable, functionally, to those members of a board of directors of an American corporation who are not on the executive committee and who do not actively participate in the management of the business. Under German law the Aufsichtsrat elected and removed members of the Vorstand, called special meetings of the stockholders, and had the right to examine and audit the books and accounts of the firm.

The Vorstand, somewhat like the executive committee of a board of directors, was charged with the actual responsibility for the management of the corporation and represented it in dealings with others. When the Farben merger took place in 1925-1926, its Vorstand consisted of 82 members and most of its functions were delegated to a Working Committee of 26 members. In 1938 the Vorstand was reduced to less than 30 members and the Working Committee was abolished. There was also a Central Committee within the Working Committee, which survived the abolition of the latter. The Vorstand met, on the average, every six weeks and was presided over by a chairman, who, in some respects, was regarded as its executive head and in others merely as primus inter pares.

In addition to their joint responsibilities, the members of the Vorstand were assigned to positions of leadership in specific fields of activity, roughly grouped under technical and commercial categories. We shall very briefly call attention to these agencies.

The Technical Committee (TBA) was composed of the technical members of the Vorstand and the leading scientists and engineers of Farben. It dealt with questions of research, development of processes, expansion and consolidation of plant facilities, and credit requests for such



purposes. Beneath it were 36 sub-committees in chemistry and 5 in engineering. The Technical Committee had a central administrative office in Berlin, called the TEI-Buere, and the 5 engineering sub-committees were grouped together as a Technical Commission (TEKO).

The Commercial Committee (KA), as distinguished from the Technical Committee, concerned itself primarily with financial, accounting, sales, purchasing, and economic political problems. The full committee consisted of about 20 members, including, in addition to Vorstand members, the heads of the Sales Combines and other administrative agencies.

Mixed Committees: Coordination between the Technical and Commercial Committees was achieved through special groups that drew their personnel from both fields. The more important of these were the Chemicals Committee, the Dyestuffs Committee, and the Pharmaceuticals Main Conference.

The numerous Farben plants were operated on the so-called leadership principle. A major unit was usually under the personal supervision of an individual Vorstand member, though in some instances one member was responsible for more than one unit, while in others a division of responsibility prevailed within a plant, according to production. Unity in policies of management was achieved by grouping the plants geographically and also in accordance with the character of production.

The Works Combines constituted the basis for geographical coordination of the Farben plants. The four original combines were the Upper Rhine, the Main Valley, the Lower Rhine, and Central Germany. In 1929 a fifth, called Works Combine Berlin, was added. The works combines coordinated such matters as overall administration, transportation, storage, etc., in their respective areas.

The Sparten constituted a means of coordinating Farben production activities on the basis of related products. Thus, Sparte I included nitrogen, synthetic fuels, lubricants, and coal; Sparte II embraced dyestuffs and their intermediates, Buna, light metals, chemicals, and pharmaceuticals; Sparte III, synthetic fibres, cellulose and cellophane, and photographic materials.

Sales Combines were established to handle the marketing of the four principal categories of Farben products. Each combine was headed by a Vorstand member, with deputies. These were the Sales Combine Dyestuffs, the Sales Combine Chemicals, the Sales Combine Pharmaceuticals, and the Sales Combine Agfa (photographic materials, artificial fibres, etc.).

The Central Finance Administration (ZEFI), was established in 1927, in connection with an office designated Berlin NW 7. To this was added the Economic Research Department (WIPO) in 1933. In 1933, a central office for liaison with the armed forces, called Vermittlungsstelle W, was added. This office dealt with such matters as mobilization questions, military security, counter-intelligence, secret patents, and research for the armed forces. Each Sparte was represented on its staff.

Unlike the antipathetic attitude of American law toward centralized control of affiliative business enterprises, German law, and to a large extent continental legal systems, encouraged combinations, sometimes rendering them mandatory. Illustrative of this attitude are the following examples;

A Konzern was a group of legally separate entities which were, functionally, under unified management. Farben was sometimes referred to as a Konzern, since it included a number of legally distinct enterprises.

A Kartell (Cartel) was a contractual combination of independent business firms to eliminate competition and regulate markets. Most cartels were international in character and some of them were worldwide in the scope of their operations. Several American firms were affiliated with them and Farben was a party to a large number of such agreements.

A Syndikat (Syndicate) was a more or less localized refinement of the cartel principle that maintained centralized control over production quotas and sales of certain specific products in Germany. Typical of these was the Stickstoff-Syndikat (nitrogen syndicate), of which

Farben was a leading member.

We conclude this brief resume of Farben by noting the principal positions held by the several defendants in the firm, together with their affiliations with various political, governmental, technical, and professional groups, to which we have added a showing of the periods of time during which they have been incarcerated in connection with the charges for which they have been on trial before this Tribunal.



AMEROS, Otto: Born 19 May 1901, Weiden, Bavaria. Professor of Chemistry, 1938-1945, member of Vorstand, Technical Committee, and Chemicals Committee; chairman of 3 Farben committees in the chemical field; plant manager of 8 of the most important plants, including Buna-Auschwitz; member of control bodies in several Farben units, including Francolor.

Member of Nazi Party and German Labor Front; Military Economy Leader; special consultant to chief of Research and Development Department, Four-Year Plan; chief of Special Committee "C" (Chemical Warfare), Main Committee on Powder and Explosives, Armament Supply Office; chief of a number of units in the Economic Group Chemical Industry.

Detained in prison from 17 January 1946 to 1 May 1946 and from 13 December 1946 to date.

BUERGIN, Ernst: Born 31 July 1885, Whylen, Baden. Electro-chemist. 1938-1945 member of Vorstand; 1937-1945 guest attendant and member of Technical Committee; chief of Works Combine Central Germany and member of Chemicals Committee during same periods; chief of the Bitterfeld and Wolfen plants; member of various Farben control groups in Germany, Norway, Switzerland, and Spain.

Member of Nazi Party and German Labor Front; Military Economy Leader; collaborator of Krauch in the Four-Year Plan; chairman of technical committee for certain important products, Economic Group Chemical Industry.

Detained in prison from 23 June 1947 to date.

BUETEFISCH, Heinrich: Born 24 February 1894, Hanover. Doctor of Engineering (Physical-Chemical). 1934-1938 deputy member of Vorstand; 1938-1945 full member of Vorstand; 1933-1938 member of Working Committee; 1932-1938 guest attendant in Technical Committee; 1938-1945 member of Technical Committee; 1938-1945 deputy chief of Sparte I (under Schneider); chief of the Leuna Works; chairman or member of control groups of many Farben concerns in the fields of chemicals, explosives, mining, synthetics, etc., in Germany, Poland, Austria, Czechoslovakia, Yugoslavia, Roumania; and Hungary.

Member of Himmler Circle of Friends; member of Nazi Party and German Labor Front; Lieutenant Colonel of SS; member of NSKK and NSFK; member of National Socialist Bund of Technicians; collaborator of Krauch in the Four-Year Plan; Production Commissioner for Oil, Ministry of Armaments; president of Technical Experts Committee, International Nitrogen Convention, etc.

Detained in prison from 11 May 1945 to date.

DUEHRFELD, Walter: Born 24 June 1899, Saarbruecken. Doctor of Engineering. Not a member of the Vorstand nor of any committees; 1932 - 1941 senior engineer of Leuna works; 1941-1944 Prokurist of Farben (a position analogous to attorney-in-fact) and chief of construction and installation at the Auschwitz Plant; 1944-1945 director of Auschwitz Plant.

1937-1945 member of Nazi Party; 1934-1945 member of German Labor Front; 1932-1945 member of National Socialist Flying Corps (Captain 1943-1945); 1944-1945 district chairman for Upper Silesia, Economic Group Chemical Industry; 1918 received the Iron Cross, Class II; 1941 War Service Cross Class II; 1944 War Service Cross Class I.

Detained in prison from 9 June 1945 to 17 June 1945 and from 5 November 1945 to date.

GAJEWSKI, Fritz: Born 13 October 1885, Pillau, East Prussia. Ph.D. in chemistry. 1931-1934 deputy member of Vorstand; 1934-1945 full member of Vorstand; 1929-1938 member of Working Committee; 1933-1945 member of Central Committee; 1929-1945 member of Technical Committee (first deputy chairman 1933-1945) 1929-1945 chief of Sparte III; 1931-1945 chief of Works Combine Berlin; manager of Agfa plants; member of board in numerous other subsidiaries and affiliates, including DAG.

Member of Nazi Party and German Labor Front; member of National Socialist Bund of German Technicians and of Reich Air-Raid Protection Bund; Military Economy Leader; member of several scientific and economic groups.

Detained in prison from 5 October 1945 to date.

GATTINEAU, Heinrich: Born 6 January 1905, Bucharest, Roumania, of German parents. Lawyer. Not a member of the Vorstand but member of Vorstand Working Committee 1932-1935 and of Farben's Southeast Europe Committee 1938-1945; 1934-1938 chief of Farben's Political Economy Department; officer or member of control groups in a dozen Farben units and subsidiaries in Germany and southeastern Europe.

1933-1934 Colonel in the SA; 1935-1945 member of Nazi Party; 1936-1945 supporting member of National Socialist Motor Corps, 1934-1945 member of German Labor Front and National Socialist Welfare Organization; member of Council for Propaganda of German Economy; member of Committee for Southeast Europe of the Economic Group Chemical Industry; holder of Cross for Distinguished Service Class I and II.

Detained in prison from 11 October 1945 to 6 August 1946 and from 11 October 1946 to date.

HAEFELIGER, Paul: A Swiss national, born 19 November 1886, Steffisburg, Canton Bern, Switzerland. Commercial school graduate. Retains his Swiss citizenship and served as honorary Swiss consul in Frankfurt from 1934-1938; acquired German citizenship in 1941 and relinquished it in 1946. 1926-1938 deputy member of Vorstand; 1938-1945 full member of Vorstand; 1937-1945 member of Commercial Committee; 1938-1945 member of Chemicals Committee; 1944-1945 vice-chairman and deputy chief for metals of Sales Combine Chemicals; member of Farben's Southeast Europe, East Asia, and East Committees. Chairman or member of control groups in several Farben units, including concerns in Germany, Austria, Czechoslovakia, Norway and Italy.

Was not a member of the Nazi Party but was a member of the German Labor Front.

Detained in prison from 11 May 1945 to 30 September 1945 and from 3 May 1947 to date.

VON DER HEYDE, Erich: Born 1 May 1900, Hong Kong, China, of German parents. Doctor in agriculture. Never a member of the Vorstand or any committees; 1939-1945 "Handlungsbevollmächtigter" with Farben (literally,



a "person authorized to act" as distinguished from a "Prokurist" or general attorney-in-fact); 1936-1940 attached to Farben's Economic Policy Department, Berlin NW 7; 1938-1940 counter-intelligence agent for Berlin NW 7, and for a short period deputy to Schneider as chief of Farben's Counter-Intelligence Branch, High Command of the Armed Forces.

1937-1945 member of Nazi Party; 1934-1945 member of German Labor Front and member of the Reiter (mounted) SS (Captain 1940-1945) 1942-1945 attached to the Military Economy and Armament Office, German High Command.

Detained in prison from 28 April 1947 to date.

HOERLEIN, Heinrich: Born 5 June 1883, Wendelsheim, Rhine Hesse. Professor of chemistry. 1926-1931 deputy member of Vorstand; 1931-1945 full member of Vorstand; 1931-1938 member of Working Committee; 1933-1945 member of Central Committee 1931-1945 member of Technical Committee (second deputy chairman 1933-1945); 1930-1945 chairman of Pharmaceutical Committee; manager of Elberfeld Plant.

Member of Nazi Party, German Labor Front, National Socialist Bund of German Technicians; member of Reich Health Council; officer or member of several scientific bodies.

Detained in prison from 16 August 1945 to date.

ILGNER, Max: Born 28 June 1899, Biobasheim, Hesse. Doctor of political science. 1934-1938 deputy member of Vorstand; 1938-1945 full member of Vorstand; 1933-1938 member of Working Committee; 1937-1945 member of Commercial Committee; 1926-1945 chief of Farben's Berlin NW 7 office; chairman of Southeast Committee; manager of Schkopau Buna Works, deputy manager of Ammoniakwerk Merseburg; officer or member of central groups of I.G. concerns in 7 countries, including American I.G. Chemical Corporation, New York.

1937 member of Nazi Party; member of German Labor Front, NSKK, National Socialist Reich Soldier's Bund; Military Economy Leader; chairman or member of 7 advisory committees to the government; officer or member of 41 chambers of commerce and economic associations and of 21

societies and clubs in Germany and abroad; holder of a half-dozen decorations from World War I, including the Iron Cross and Hesse Medal for Bravery, and of orders of distinction from various other governments.

Detained in prison from 7 April 1945 to date.

JAEHNE, Friedrich: Born 24 October 1879, Neuss, Germany, Dipl. Engineer. 1934-1938 deputy member of Vorstand; 1938-1945 full member of Vorstand and member of Technical Committee (guest attendant since 1926); 1938-1945 deputy chief of Works Combine Main Valley; chairman of the Farben Technical Commission; chief of engineering department of Hoechst plant; member of control boards of several Farben units.

Member of Nazi Party and German Labor Front; Military Economy Leader; member of Greater Advisory Council, Reich Group Industry; member of Presidium of German Standardizing Committee; chief of Technical Committee, Trade Association of the Chemical Industry.

Detained in prison from 18 April 1947 to date.

VON KNIERIEM, August: Born 11 August 1887, Riga, Latvia. Lawyer. 1926-1931 deputy member of Vorstand; 1931-1945 full member of Vorstand, and occasional guest attendant at meetings of Aufsichtsrat; 1931-1938 member of Working Committee; 1938-1945 member of Central Committee; 1931-1945 guest attendant at meetings of Technical Committee; 1933-1945 chairman of Legal Committee and Patent Commission; self-styled "principal attorney" of Farben; member of board in several Farben units and in two Dutch firms at The Hague.

Member of Nazi Party, German Labor Front, National Socialist Lawyers' Association; member of 4 committees and several sub-committees of Reich Group Industry dealing with law, patents, trademarks, market regulation, etc.; member of a large number of professional associations.

Detained in prison from 7 April 1945 to date.

KRAUCH Carl: Born 7 April 1887, Darmstadt, Germany. Doctor of natural science, professor of Chemistry. Member of Vorstand and of its Control Committee; member and chairman of Aufsichtsrat 1940-1945; chief of Sparte I 1929-1938; chief of Berlin Liaison Office (Vermittlungsstelle W); member of the board in a number of major Farben subsidiaries and affiliates, including the Ford Works at Cologne.

In April 1936 placed in charge of the Research and Development Department for Raw Materials and Foreign Currency on Goering's staff; October 1936 in charge of Research and Development Department in the Office of German Raw Materials and Synthetics, under the Four-Year Plan; July 1938 1945 Plenipotentiary General for Special Questions of Chemical Production; December 1939 Commissioner for Economic Development under Four-Year Plan; 1938-1945 Military Economy Leader; member of Directorate, Reich Research Council.

1937, member of Nazi Party; member of NSFK; member of German Labor



Front.

Detained in prison from 3 September 1946 to date.

KUEHNE, Hans: Born 3 June 1880, Magdeburg, Germany. Chemist. 1926-1945 member of Vorstand and of working Committee until 1938; 1925-1945 member of Technical Committee; 1933-1945 chief of Works Combine Lower Rhine; 1926-1945 member of Chemicals Committee; plant leader of Leverkusen plant; officer or member of Aufsichtsrat in numerous Farben concerns within Germany and 8 in 5 other countries.

Became a member of the Nazi Party in 1933 but was expelled shortly thereafter and not reinstated until 1937; member of German Labor Front; member of groups in economic, commercial, and labor offices of the Reich and Local governments.

Detained in prison from 29 April 1947 to date.

RUGLER, Hans: Born 4 December 1900, Frankfurt/Main. Doctor of political science. Not a member of the Vorstand; 1928-1945 Prokurist (with title of "Director"); 1934-1945 member of Commercial Committee; 1938-1945 member of Dyestuffs Application Committee; 1934-1945 chief of Sales Department Dyestuffs for Hungary, Rumania, Yugoslavia, Czechoslovakia, Austria, Greece, Bulgaria, Turkey, the Near East, and Africa; 1939-1945 member of Farben's Southeast Europe Committee; 1942-1944 member of Commercial Committee of Francolor, Paris.

1939-1945 member of Nazi Party; 1934-1945 member of German Labor Front; 1938-1939 Reich Economics Ministry commissioner for Aussig-Falkenau factories, Czechoslovakia, and manager of said plants and member of the Advisory Council of the Aufsichtsrat, 1939-1945.

Detained in prison from 11 July 1945 to 6 October 1945 and from 18 April 1947 to date.

LAUTENSCHLAGER, Carl: Born 27 February 1888, Karlsruhe, Baden. Doctor

of medicine, doctor of chemical engineering, professor of pharmacy, honorary senator (regent) of the University of Marburg, formerly scientific assistant at the Physiological Institute of the University of Heidelberg and the Pharmacological Institute of the University of Freiburg in Breisgau. 1931-1938 deputy member of Vorstand; 1938-1945 full member of Vorstand, member of Technical Committee, and chief of Works Combine Main Valley; 1926-1945 member of Pharmaceuticals Committee; plant leader of Hoechst plant; participant in Pharmaceutical, Scientific, and Main Conferences of Farben.

1938-1945 member of Nazi Party; 1934-1945 member of German Labor Front 1942-1945 Military Economy Leader; member of various scientific and research organizations.

Detained in prison from 11 December 1946 to date.

MANN, Wilhelm: Born 4 April 1894, Wuppertal-Elberfeld. Commercial school graduate. 1931-1934 deputy member of Vorstand; 1934-1945 full member of Vorstand; 1931-1938 member of Working Committee; 1937-1945 member of Commercial Committee; 1931-1945 Chief of Sales Combine Pharmaceuticals; 1926-1945 member of Farben Pharmaceuticals Committee; chairman of East Asia Committee; official or member of numerous control groups in Farben concerns (including chairmanship in "DEGESCH").

Member of Nazi Party; member of SA with rank of lieutenant; member of German Labor Front; Reich Economic Judge; member of Greater Advisory Council, Reich Group Industry; member of many scientific organizations.

Detained in prison from 19 September 1945 to 16 October 1945 and from 26 March 1947 to date.

TER MEER, Fritz: Born 4 July 1884, Uerdingen, Lower Rhine. Ph. D. in chemistry. 1926-1945 member of Vorstand; 1926-1938 member of Working Committee; 1933-1945 member of Central Committee; 1925-1945 member of Technical Committee (chairman 1933-1945); 1929-1945 chief of Sparte II,

1936-1945 technical representative on Dyestuffs Committee; officer or member of control groups of numerous Farben units, subsidiaries and affiliates, including Francolor, Paris, as well as concerns in Italy, Spain, Switzerland, and the United States.

Member of Nazi Party and German Labor Front; Military Economy Leader; member of National Socialist Bund of German Technicians; commissioner for Italy of the Reich Ministry for Armament and War Production; member of Economic Group Chemical Industry, holding several official positions and titles; member of numerous technical and scientific bodies.

Detained in prison from 7 June 1945 to date.

OSTER, Heinrich: Born 9 May 1878, Strasbourg, Alsace-Lorraine. Doctor of philosophy (chemistry). 1928-1931 deputy member of Vorstand; 1931-1945 full member of Vorstand; 1929-1938 member of Working Committee; 1937-1945 member of Commercial Committee; 1930-1945 manager of Nitrogen Syndicate; member of East Asia Committee and chief of Farben's sales organization for nitrogen and oil; member of several control groups in Germany, Austria, Norway, and Yugoslavia.

Member of Nazi Party; supporting member of SS Reitersturm (mounted unit); member of German Labor Front; chief or member of various sections of official or quasi-official bodies. During World War I received the Iron Cross and several state decorations. During World War II received the War Service Cross.

Detained in prison from 31 December 1946 to date.

SCHMITZ, Hermann: Born 1 January 1881, Essen/Ruhr. Commercial college graduate, no degree. 1925-1945 member of Vorstand; 1930-1945 member of Central Committee; 1935-1945 chairman of Vorstand and guest attendant at meetings of Aufsichtsrat; 1929-1940 chairman of the board, I.G. Chemie Basel, Switzerland; 1937-1939 chairman of the board, American I.G. Chemical



Corp., New York; chairman of Aufsichtsrat, DAG (formerly Alfred Nobel & Co.); member of Aufsichtsrat, Friedrich Krupp A.G.; Essen; chairman or member of control groups in several other subsidiary and affiliated Farben concerns.

1933 member of Reichstag; chairman of the Currency Committee of the Reichsbank; member of board of directors, Bank of International Settlements; Basel; member of Committee of Seven, German Gold Discount Bank, Berlin; member or chairman of control groups in several other financial institutions. Member of Committee of Experts on Raw Materials questions; member of Select Advisory Council, Reich Group Industry; Military Economy Leader.

Detained in prison from 7 April 1945 to date.

SCHNEIDER, Christian: Born 19 November 1887, Kulmbach, Bavaria. Chemist. 1928-1937 deputy member of Vorstand; 1938-1945 full member of Vorstand and of Central Committee; 1937-1938 member of Working Committee; 1929-1938 guest attendant at meetings of Technical Committee, full member 1938-1945; 1938-1945 chief of Sparte I; 1937-1945 chief of plant leaders and chief counter-intelligence agent of Vermittlungestelle W; manager of Ammoniakwerk Horseburg; chief of Farben's Central Personnel Department; member of control bodies of several Farben units.

Member of Nazi Party; supporting member of SS; member of German Labor Front; member of Advisory Council, Economic Group Chemical Industry; member of Experts Committee, Reich Trustee of Labor.

Detained in prison from 6 February 1947 to date.

VON SCHNITZLER, Georg: Born 28 October 1884, Cologne. Lawyer. 1926-1945 member of Vorstand; 1926-1938 member of Working Committee; 1930-1945 member of Central Committee; 1929-1945 guest attendant of Technical Committee; 1937-1945 chairman of Commercial Committee; 1930-1945 chief of Dyestuffs

Sales Combine; various periods between 1926 and 1945, member of other Farben committee, etc.

Member of Nazi Party; Captain of SA ("Sturmabteilung" of the Nazi Party); member of German Labor Front; member of Nazi Automobile Association (part of the SA); Military Economy Leader; member of Greater Advisory Council, Reich Group Industry; deputy chairman, Economic Group Chemical Industry; vice-president, Court of Arbitration, International Chamber of Commerce; chairman, Council for Propaganda of German Economy; chairman of Aufsichtsrat, Chemische Werke Aussig-Falkenau, Aussig, Czechoslovakia; member of Aufsichtsrat, Francolor, Paris; officer or member of Aufsichtsrat of other Farben affiliates in Spain and Italy.

Detained in prison from 7 May 1945 to date.

WURSTER, Karl; Born 2 December 1900, Stuttgart. Doctor of chemistry. For a brief period assistant in the Institute for Inorganic Chemistry and Chemical Technology at Stuttgart Polytechnic. 1938-1945 member of Vorstand, Technical Committee, and Chemicals Committee; 1940-1945 chief of Works Combine Upper Rhine; chairman of Inorganics Committee and Plant Leader of the Oppau plant, Ludwigshafen; member of Aufsichtsrat in several Farben concerns.

Member of Nazi Party and German Labor Front; Military Economy Leader; collaborator of Krauch in the Four-Year Plan, Office for German Raw Materials and Synthetics; acting vice-chairman of Presidium, Economic Group Chemical Industry, and chief of chairman of its Technical Committee; Sub-Group for Sulphur and Sulphur Compounds; holder of the Knight's Cross of the War Merit Cross.

Detained in prison from 25 April 1947 to date.

THE PRESIDENT:

COUNTS ONE AND FIVE

Counts One and Five of the Indictment are predicated on the same facts and involve the same evidence. These two Counts will, therefore, be considered together.

Count One consists of eighty-five paragraphs. The criminal charge is contained in paragraphs one, two, and eighty-five. The other paragraphs are in the nature of a bill of particulars. We quote the three charging paragraphs:

"1. All of the defendants, acting through the instrumentality of Farben and otherwise, with divers other persons during a period of years preceding 8 May 1945, participated in the planning, preparation, initiation, and waging of wars of aggression and invasions of other countries, which wars of aggression and invasions were also in violation of international laws and treaties. All of the defendants held high positions in the financial, industrial and economic life of Germany and committed these Crimes against Peace, as defined by Article II of Control Council Law No. 10, in that they were principals in, accessories to, ordered, abetted, took a consenting part in, were connected with plans and enterprises involving, and were members of organizations or groups, including Farben, which were connected with the commission of said crimes.

"2. The invasions and wars of aggression referred to in the preceding paragraph were as follows: Against Austria, 12 March 1937; against Czechoslovakia, 1 October 1938 and 15 March 1939; against Poland 1 September 1939; against the United Kingdom and France, 3 September 1939; against Denmark and Norway, 9 April 1940, against Belgium, the Netherlands and Luxembourg, 10 May 1940, against Yugoslavia and Greece, 6 April 1941; against the U.S.S.R., 22 June 1941, and against



the United States of America, 11 December 1941.

"85. The acts and conduct set forth in this count were committed by the defendants unlawfully, wilfully and knowingly, and constitute violations of international laws, treaties, agreements and assurances, and of Article II of Control Council Law No. 10."

Count Five is predicated on the acts set forth in Counts One, Two, and Three, and charges that:

"146. All the defendants, acting through the instrumentality of Farben and otherwise, with divers other persons, during a period of years preceding 8 May 1945, participated as leaders, organizers, instigators and accomplices in the formulation and execution of a common plan or conspiracy to commit, or which involved the commission of Crimes against Peace, (including the acts constituting War Crimes and Crimes against Humanity, which were committed as an integral part of such Crimes against Peace) as defined by Control Council Law No. 10, and are individually responsible for their own acts and for all acts committed by any persons in the execution of such common plan or conspiracy.

"147. The acts and conduct of the defendants set forth in Counts One, Two and Three of this Indictment formed a part of said common plan or conspiracy and all of the allegations made in said Counts are incorporated in this Count."

At the close of the Prosecution's evidence the defendants moved for a finding of Not Guilty with respect to the charges and particulars under Counts One and Five. This motion questioned the sufficiency of the evidence with respect to each of the criminal acts charged in the challenged Counts. The Tribunal decided to withhold ruling on the motion until final judgment. This Judgment, although embracing a consideration of all of the evidence for both Prosecution and Defense,

will effectively and automatically dispose of that motion.

Control Council Law No. 10, as stated in its preamble, was promulgated "In order to give effect to the terms of the Moscow Declaration of 30 October 1943, and the London Agreement of 8 August 1945, and the Charter issued pursuant thereto and in order to establish a uniform legal basis in Germany for the prosecution of war criminals and other similar offenders, other than those dealt with by the International Military Tribunal." In Article 1, the Moscow Declaration and the London Agreement are made integral parts of the law. In keeping with the purpose thus expressed, we have determined that Control Council Law No. 10 cannot be made the basis of a determination of guilt for acts or conduct that would not have been criminal under the law as it existed at the time of the rendition of the judgment by the IMT in the case of United States of America vs Hermann Wilhelm Goering, et al. That well-considered Judgment is basic and persuasive precedent as to all matters determined therein. In the IMT case, Count Two bears a marked similarity to Count One in this case. Count One of that case is similar to our Count Five. Regarding these Counts the IMT said:

"Count One charges the common plan or conspiracy. Count Two charges the planning and waging of war. The same evidence has been introduced to support both counts. We shall therefore discuss both counts together, as they are in substance the same.

"But in the opinion of the Tribunal the conspiracy must be clearly outlined in its criminal purpose. It must not be too far removed from the time of decision and of action. The planning, to be criminal, must not rest merely on the declarations of a party program, such as are found in the twenty-five points of the Nazi Party, announced in 1920, or the political affirmations expressed in 'Mein Kampf' in later years. The Tribunal must examine whether a concrete plan to wage war existed, and determine the participants in

that concrete plan.

"It is immaterial to consider whether a single conspiracy to the extent and over the time set out in the indictment has been conclusively proved. Continued planning, with aggressive war as the objective, has been established beyond a doubt.

"The Tribunal will therefore disregard the charges in Count One that the defendants conspired to commit war crimes and crimes against humanity, and will consider only the common plan to prepare, initiate, and wage aggressive war."

In passing judgment upon the several defendants with respect to the common plan or conspiracy charged by Count One and the charges of planning and waging aggressive war as charged by Count Two, the IMT made these observations concerning:

KALTENBRUNNER — Indicted and found Not Guilty under Count One.

"The Anschluss, although it was an aggressive act, is not charged as an aggressive war, and the evidence against Kaltenbrunner under Count One does not, in the opinion of the Tribunal, show his direct participation in any plan to wage such a war."

FRANK — Indicted and found Not Guilty under Count One.

"The evidence has not satisfied the Tribunal that Frank was sufficiently connected with the common plan to wage aggressive war to allow the Tribunal to convict him on Count One."

FRICK — Indicted under Counts One and Two. Found Not Guilty on Count One, Guilty on Count Two.

"Before the date of the Austrian aggression Frick was concerned only with domestic administration within the Reich. The evidence does not show that he participated in any of the conferences at which Hitler outlined his aggressive intentions. Consequently, the Tribunal takes the view that



Frick was not a member of the common plan or conspiracy to wage aggressive war as defined in this Judgment....Performing his allotted duties, Frick devised an administrative organization in accordance with wartime standards. According to his own statement, this was actually put into operation after Germany decided to adopt a policy of war."

STREICHER — Indicted and found Not Guilty under Count One.

"There is no evidence to show that he was ever within Hitler's inner circle of advisers; nor during his career was he closely connected with the formulation of the policies which led to war. He was never present, for example, at any of the important conferences when Hitler explained his decisions to his leaders. Although he was a Gauleiter, there is no evidence to prove that he had knowledge of those policies. In the opinion of the Tribunal, the evidence fails to establish his connection with the conspiracy or common plan to wage aggressive war as that conspiracy has been elsewhere defined in this judgment."

FUNK — Indicted under Counts One and Two. Found Not Guilty on Count One; Guilty on Count Two.

"Funk was not one of the leading figures in originating the Nazi plans for aggressive war. His activity in the economic sphere was under the supervision of Goering as Plenipotentiary General of the Four Year Plan. He did, however, participate in the economic preparation for certain of the aggressive wars, notably those against Poland and the Soviet Union, but his guilt can be adequately dealt with under Count Two of the Indictment. In spite of the fact that he occupied important official positions, Funk was never a dominant figure in the various programs in which he participated. This is a

mitigating fact of which the Tribunal takes notice."

SCHACHT — Indicted and found Not Guilty under Counts One and Two.

"It is clear that Schacht was a central figure in Germany's rearmament program, and the steps which he took, particularly in the early days of the Nazi regime, were responsible for Nazi Germany's rapid rise as a military power.

But rearmament of itself is not criminal under the Charter. To be a crime against peace under Article 6 of the Charter, it must be shown that Schacht carried out this rearmament as part of the Nazi plans to wage aggressive war.

"Schacht was not involved in the planning of any of the specific wars of aggression charged in Count Two. His participation in the occupation of Austria and the Sudetenland (neither of which are charged as aggressive wars) was on such a limited basis that it does not amount to participation in the common plan charged in Count One. He was clearly not one of the inner circle around Hitler, which was most closely involved with this common plan."

DOENITZ — Indicted under Counts One and Two. Found Not Guilty on Count One; Guilty on Count Two.

"Although Doenitz built and trained the German U-boat arm, the evidence does not show he was privy to the conspiracy to wage aggressive wars or that he prepared and initiated such wars. He was a line officer performing strictly tactical duties. He was not present at the important conferences when plans for aggressive wars were announced, and there is no evidence he was informed about the decisions reached there....In the view of the Tribunal, the evidence shows that Doenitz was active in waging aggressive war."

VON SCHIRACH — Indicted and found Not Guilty under Count One.

"Despite the warlike nature of the activities of the Hitler

Jugend, however, it does not appear that Von Schirach was involved in the development of Hitler's plan for territorial expansion by means of aggressive war, or that he participated in the planning or preparation of any of the wars of aggression."

SAUCKEL — Indicted and found Not Guilty under Counts One and Two.

"The evidence has not satisfied the Tribunal that Sauckel was sufficiently connected with the common plan to wage aggressive war or sufficiently involved in the planning or waging of the aggressive wars to allow the Tribunal to convict him on Counts One or Two."

VON PAPEN — Indicted and found Not Guilty under Counts One and Two.

"There is no evidence that he was a party to the plans under which the occupation of Austria was a step in the direction of further aggressive action, or even that he participated in plans to occupy Austria by aggressive war if necessary. But it is not established beyond a reasonable doubt that this was the purpose of his activity, and therefore the Tribunal cannot hold that he was a party to the common plan charged in Count One or participated in the planning of the aggressive wars charged under Count Two."

SPEER — Indicted and Found Not Guilty under Counts One and Two.

"The Tribunal is of the opinion that Speer's activities do not amount to initiating, planning, or preparing wars of aggression, or of conspiring to that end. He became the head of the armament industry well after all of the wars had been commenced and were under way. His activities in charge of German armament production were in aid of the war effort in the same way that other productive enterprises aid in the waging of war; but the Tribunal is



not prepared to find that such activities involve engaging in the common plan to wage aggressive war as charged under Count One or waging aggressive war as charged under Count Two."

FRITZSCHE — Indicted and found Not Guilty under Count One.

"Never did he achieve sufficient stature to attend the planning conferences which led to aggressive war; indeed according to his own uncontradicted testimony he never even had a conversation with Hitler. Nor is there any showing that he was informed of the decisions taken at these conferences. His activities cannot be said to be those which fall within the definition of the common plan to wage aggressive war as already set forth in this judgment.....It appears that Fritzsche sometimes made strong statements of a propagandistic nature in his broadcasts. But the Tribunal is not prepared to hold that they were intended to incite the German people to commit atrocities on conquered peoples, and he cannot be held to have been a participant in the crimes charged. His aim was rather to arouse popular sentiment in support of Hitler and the German war effort."

BORMANN — Indicted and found Not Guilty under Count One.

"The evidence does not show that Bormann knew of Hitler's plans to prepare, initiate, or wage aggressive wars. He attended none of the important conferences when Hitler revealed piece by piece those plans for aggression. Nor can knowledge be conclusively inferred from the positions he held. It was only when he became head of the Party Chancellory in 1941, and later in 1943 secretary to the Fuehrer when he attended many of Hitler's conferences, that his

positions gave him the necessary access. Under the view stated elsewhere which the Tribunal has taken of the conspiracy to wage aggressive war, there is not sufficient evidence to bring Bormann within the scope of Count One."

From the foregoing it appears that the IMT approached a finding of guilty of any defendant under the charges of participation in a common plan or conspiracy or planning and waging aggressive war with great caution. It made findings of guilty under Counts One and Two only where the evidence of both knowledge and active participation was conclusive. No defendant was convicted under the charge of participating in the common plan or conspiracy unless he was, as was the Defendant Hess, in such close relationship with Hitler that he must have been informed of Hitler's aggressive plans and took action to carry them out or attended at least one of the four secret meetings at which Hitler disclosed his plans for aggressive war. The IMT Judgment lists these meetings as having taken place on 5 November 1937, 23 May 1939, 22 August 1939, and 23 November 1939.

It is important to note here that Hitler's public utterances differed widely from his secret disclosures made at these meetings.

Common Knowledge:

During the early stages of the trial the Prosecution spent considerable time in attempting to establish that for some time prior to the outbreak of war there existed in Germany public or common knowledge of Hitler's intention to wage aggressive war. It introduced in evidence excerpts from the program of the Nazi Party and from Hitler's book Mein Kampf.

Prosecution's Exhibit 4 is a summarization of the program of the NSDAP published in 1941 in the National Socialistic Year Book. This program was proclaimed on 24 February 1920 and remained unaltered down to 1941. The summarization consists of twenty-five points. We quote those dealing with military and foreign policy.

"1) We demand the unification of all Germans in the greater Germany on the basis of the right of self-determination of peoples.

"2) We demand equality of rights for the German people in respect to the other nations; abrogations of the peace treaties of Versailles and St. Germain.

"3) We demand land and territory (colonies) for the sustenance of our people, and colonization for our surplus population."

"12) In consideration of the monstrous sacrifice in property and blood that each war demands of the people, personal enrichment through a war must be designated as a crime against the people. Therefore we demand the total confiscation of all war profits."

"22) We demand abolition of the mercenary troops and formation of a national army."

Much more belligerent in tone are the excerpts from Mein Kampf, the basic theme of which was that the frontiers of the Reich should embrace all Germans. Of this book the IMT said:

"Mein Kampf is not to be regarded as a mere literary exercise, nor as an inflexible policy or plan incapable of modification.

"Its importance lies in the unmistakable attitude of aggression revealed throughout its pages."

This book had a circulation throughout Germany of over six million copies. We must bear in mind, however, that it was written by Hitler the politician, before his party came to power. It is consistent with statements that he made to his immediate circle of confidants and plotters, but it is entirely inconsistent with his many speeches and



29 July-14-MW-5-11-Schwab  
COURT VI, CASE VI

proclamations made as head of the Reich for public consumption. Some of these we will now consider.

Two thoughts permeated Hitler's public utterances from Communism and love of peace. On 17 May 1933, in addressing the German Reichstag, he stressed the futility of violence as a medium for improving the conditions of Germany and Europe and asserted that such violence would necessarily cause a collapse of the social and political order and would result in Communism. He then said that Germany "is also entirely ready to renounce all offensive weapons of every sort if the armed nations, on their side, will destroy their offensive weapons within a specified period, and if their use is forbidden by an international convention.....Germany is at all times prepared to renounce offensive weapons if the rest of the world does the same. Germany is prepared to agree to any solemn pact of non-aggression because she does not think of attacking but only of acquiring security."

On 14 October 1933, Hitler announced the withdrawal of Germany from the League of Nations in a radio speech filled with protestations of the friendly intentions of the Reich and his government's devotion to the cause of peace. Many similar passages are to be found in his public utterances and proclamations down to and including the announcement of the Four-Year-Plan.

The Four-Year Plan, according to the Prosecution's version of the evidence, was designed to rearm and rebuild Germany, militarily, and economically, for the purpose of waging aggressive war, and the part played by the defendants in the execution of that plan is relied upon as a strong circumstance tending to show their wilful participation in Hitler's plans for aggressive war. The Four-Year Plan was announced to the German public and the world by Hitler's speech of 9 September 1936, delivered at a Nazi Party Rally at Nurnberg. He first reviewed in exaggerated fashion the accomplishments of Germany in the economic field since his rise to power. He then launched into an outline of an ambitious program to further rehabilitate and strengthen Germany in the ensuing four years. He

remained the people in demagogic style that he had already procured for them increased employment, better highways, more automobiles, stable currency, more constant food supply, and increased production in various fields through German skill and through the development of chemical, mining, and other industries. He justified the increase in Germany's armed forces upon the ground that this was necessary and in proportion to the increasing dangers surrounding Germany. He then said: "The German people, however, has no other wish than to live in peace and friendship with all those who want the peace and who do not interfere with us in our own country."

On 30 January 1937, Hitler made a speech in Berlin at the Kroll Opera House, in which he again discussed the Four-Year Plan and announced a city-planning program of construction for Berlin, concerning which he said: "For the execution of that plan, concerning which he said: "For the execution of that plan, a period of twenty years is provided. May the Almighty grant us peace, during which the gigantic task may be completed."

On 12 March 1938, Hitler issued a proclamation in extravagant terms attempting to justify the Austrian Anschluss. He attacked the Austrian government under Chancellor Schuschnigg as an oppressor of the people that had proposed a fraudulent election which could only lead to civil war. This, Hitler sought to prevent.

On 18 March 1938, Cardinal Innitzer and the Bishops of Austria issued, from Vienna, a solemn declaration in which they said: "We recognize with joy that the National Socialist movement has produced outstanding achievements in the spheres of national and economic reconstruction as well as in their welfare policy for the German Reich and people, and in particular for the poorest strata of the people. We are also convinced that strength through the activities of the National Socialist movement the danger of all-destroying godless Bolshovism was averted." Thus it appears that even high ecclesiastical leaders were misled as to Hitler's ultimate purpose.



After securing Austria for the Reich, Hitler turned his attention to Czechoslovakia and applied increasing pressure upon that country under the pretext of rescuing the Sudeten Germans from claimed oppression by the Czech government. This aggressive attitude on the part of Hitler culminated in the Munich Agreement of 29 September 1938, in which Germany and the United Kingdom, France, and Italy agreed to the occupation of the Sudeten area by German troops and the determination of its frontiers by an international commission. The following day, 30 September, Adolf Hitler and Neville Chamberlain signed the following accord:

"We have had a further conversation today and we are agreed in recognizing that the question of German-English relations is of the highest importance for both countries and for Europe. We regard the Agreement which was signed last evening and the German-English Naval Agreement as symbolic of the wish of our two peoples never again to wage war against each other. We are determined to treat other questions which concern our two countries also through the method of consultation and further the method of consultation and further to endeavor to remove possible causes of difference of opinion in order thus to contribute towards assuring the peace of Europe."

On 6 December 1938, Georges Bonnet and Joachim von Ribbentrop signed, as foreign ministers for their respective countries, a Franco-German Declaration of pacific and neighborly relations. In making this Declaration public, von Ribbentrop emphasized its contribution to the peaceful relationship of the two countries.

In the light of history we now know that Hitler had no intention of stopping with the gains he had made through the Munich agreement. He turned his attention to the liquidation of the remainder of Czechoslovakia. On 14 March 1939, the President and the Foreign Minister of the Czech Republic met with von Ribbentrop, Goering, and Keitel and other officials of the Reich. Under threat of invasion and destruction of their country the Czech officials signed an agreement for the incorporation of the remainder of Czechoslovakia into the German Reich, and on 16 March 1939 a decree was issued creating Bohemia and Moravia a Reich protectorate. In order to justify this move in the minds of the German people, Hitler carried on for some time systematic

propaganda against the Czechs, the foundation of which was, as usual, the fear of Russia. The Czechs were accused of negotiating with Russia for the construction and use of airfields and bases on Czech soil. Even in the presence of these activities, Hitler continued to emphasize his love of peace and the necessity of providing for the defense for Germany.

In 1939, Hitler entered into non-aggression pacts with other European states, purporting to be in furtherance of the maintenance of peace. There followed the German-Italian mutual friendship and alliance pact of 22 May 1939; the German-Danish non-aggression pact of 31 May 1939; a non-aggression pact between the German Reich and the Republic of Estonia of 7 June 1939; and a similar pact with the Republic of Latvia on the same date. On 23 August 1939, Germany and the Union of Socialist Soviet Republics likewise entered into a non-aggression pact. These agreements were all made public and are of a such a nature as to tend to conceal rather than expose an intention on the part of Hitler and his immediate circle to start an aggressive war.

But what of Poland? In April 1939, Hitler issued strict directives to the High Command to prepare for war against Poland. But, in a speech to the Reichstag, on 28 April 1939, he said:

"I have regretted greatly this incomprehensible attitude of the Polish Government, but that alone is not the decisive fact; the worst is that now Poland like Czechoslovakia a year ago believes, under the pressure of a lying international campaign, that it must call up its troops, although Germany on her part has not called up a single man, and had not thought of proceeding in any way against Poland..... The intention to attack on the part of Germany which was merely invented by the international press....."

Thus he continued to mislead the public with reference to his true purpose. He led the public to believe with reference to his true purpose. He led the public to believe that he still maintained the view that Poland and Germany could work together in harmony--a view which he had expressed to the Reichstag on 20 February 1938, in these

words:

"And so the way to a friendly understanding has been successfully paved, an understanding which, beginning with Danzig, has today, in spite of the attempts of certain mischief makers, succeeded in finally taking the poison out of the relations between Germany and Poland and transforming them into a sincere, friendly cooperation. Relying on her friendship, Germany will not leave a stone unturned to save that ideal which provides the foundation for the task which is ahead of us — peace."

While it is true that those with an insight into the evil machinations of power politics might have suspected Hitler was playing a cunning game of seething restless Europe, the average citizen of Germany, be he professional man, farmer, or industrialist, could scarcely be charged by these events with knowledge that the rulers of the Reich were planning to plunge Germany into a war of aggression.

During this period, Hitler's subordinates occasionally gave expression to belligerent utterances. But, even these can only be remote inference, formed in retrospect, be connected with a plan for aggressive war. The point here is the common or general knowledge of Hitler's plans and purpose to wage aggressive war. He was the dictator. It was natural that the people of Germany listened to and read his utterances in the belief that he spoke the truth.

It is argued that after the events in Austria and Czechoslovakia, men of reasonable minds must have known that Hitler intended to wage aggressive war, although they may not have known the country to be attacked or the time of initiation. This argument is not sound. Hitler's moves in Austria and Czechoslovakia were for the avowed purpose of reuniting the German people under one Reich. The purpose met general public approval. By a show of force but without war, Hitler had succeeded. In the eyes of his people he had scored great and just diplomatic successes without endangering the peace. This was affirmed in the common mind by the Munich Agreement and the various non-aggressive pacts and accords which followed. The statesmen of other nations, conceding Hitler's successes by the agreements they made with



him, affirmed their belief in his word. Can we say the common man of Germany believed less?

We reach the conclusion that common knowledge of Hitler's plans did not prevail in Germany, either with respect to a general plan to wage aggressive war, or with respect to specific plans to attack individual countries, beginning with the invasion of Poland on 1 September 1939.

The Tribunal will at this time rise for its morning recess.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: I shall continue with the reading of the judgment.

Personal Knowledge:

It is a basic fact that a plan or conspiracy to wage wars of aggression did exist. It was primarily the plan of Hitler and was participated in, as to both its formation and execution, by a group of men having a particularly close and confidential relationship with the Dictator. It was a secret plan. At first, it was general in scope and later became more specific and detailed. This is established by unquestioned events. Its purpose was to make Germany the dominant military and economic power of Europe by militant diplomacy and finally by conquest. It started more as an objective than as a plan complete in detail. From time to time it bore offspring — the specific plans for conquest.

It is not clear when Hitler first conceived his general plan of aggression or with whom he first discussed it. He made a definite disclosure at a secret meeting on 15 November 1937. The persons present were Lieutenant Colonel Hossbach, Hitler's personal Adjutant; Goering, Commander-in-Chief of the Luftwaffe; von Neurath, Reich Foreign Minister; Raeder, Commander-in-Chief of the Navy, General von Blomberg, Minister of War; and General von Fritsch, Commander-in-Chief of the Army. This meeting was followed by other secret meetings of special significance on 23 May 1939, 22 August 1939, and 23 November 1939. Thus three of the meetings preceded the invasion of Poland. None of the defendants attended any of these meetings.

If the defendants, or any of them, are to be held guilty under either Count One or Five or both on the ground that they participated in the planning, preparation, and initiation of wars of aggression or invasions, it must be shown that they were parties to the plan or conspiracy, or, knowing of the plan, furthered its purpose and objective

by participating in the preparation for aggressive war. The solution of this problem requires a consideration of basic facts disclosed by the record. These facts include the positions, if any, held by the defendants with the state and their authority, responsibility, and activities thereunder, as well as their positions and activities with or in behalf of Farben.

In weighing the evidence and in determining the ultimate facts of guilt or innocence with respect to each defendant, we have sought to apply these fundamental principles of Anglo-American criminal law:

1. There can be no conviction without proof of personal guilt.
2. Guilt must be proved beyond a reasonable doubt.
3. Each defendant is presumed to be innocent, and that presumption abides with him throughout the trial.
4. The burden of proof is, at all times, upon the Prosecution.
5. If from credible evidence two reasonable inferences may be drawn, one of guilt and the other of innocence, the latter must prevail.  
(United States of America vs. Friedrich Flick, et al., Case No. 5, American Military Tribunal IV, Nurnberg, Germany.)

In considering the many conflicts in the evidence and the multitude of circumstances from which inferences may be drawn, as disclosed by the voluminous record before us, we have endeavored to avoid the danger of viewing the conduct of the defendants wholly in retrospect. On the contrary, we have sought to determine their knowledge, their state of mind, and their motives from the situation as it appeared, or should have appeared, to them at the time.

The Prosecution has designated as the number one defendant in



this case Carl Krauch, who held positions of importance with both the government and Farben.

While the Farben organization, as a corporation, is not charged under the Indictment with committing a crime and is not the subject of prosecution in this case, it is the theory of the Prosecution that the defendants individually and collectively used the Farben organization as an instrument by and through which they committed the crimes enumerated in the Indictment. All of the members of the Vorstand or governing body of Farben who were such at the time of the collapse of Germany were indicted and brought to trial. This Tribunal found that Max Brueggemann was not in a physical condition to warrant continuing him as a defendant in the case, and by an appropriate order separated him from this trial. All of the other Vorstand members are defendants in this case. The Defendants Duerrfeld, Gattineau, von der Heyde, and Kugler, were not members of the Vorstand but held places of importance with Farben.

If we emphasize the Defendant Krauch in the discussion which follows, it is because the Prosecution has done so throughout the trial and has apparently regarded him as the connecting link between Farben and the Reich on account of his official connections with both.

Krauch became a member of the Vorstand in 1933 and continued in that position until 1940, when he became a member of the Aufsichtsrat. From 1929 to 1938 he was Chief of Sparte I.

In 1934, Hitler turned his attention to the rearmament of Germany and sought to impress industry with the necessity of participating therein. It was then sought to encourage rearmament through an industrial organization of which Farben was a member, known as the Reich Group Industry. At that time the industries were asked to work out detailed plans for protecting their plants from the results of air raids. Krauch was later given duties in connection with the

planning of air raid protection, which resulted in a reprimand from Goering in Hitler's presence in 1944. He was accused by Goering with failure to properly plan and supervise air raid protection for plants that were being severely bombed by Allied air forces. It may be noted that this is the only instance in which the Defendant Krauch talked to Hitler. In 1934, it was decided to create a "War Economic Central Office of Farben for all matters of military economy and questions of military policy". Krauch was instrumental in organizing this agency, known as Vermittlungsstelle W, the purpose of which we have concluded to be to act as a clearing house for information concerning rearmament between the various plants and agencies of Farben and the Reich authorities in charge of the rearmament of Germany. It received and distributed information, but it was not an agency for determining policy or for the giving of orders regarding a policy that had already been determined. It did facilitate the cooperation of Farben with the rearmament program, but it was not a planning organization. It was a part of the program for rearmament, but neither its organization nor its operation gives any hint of plans for aggressive war.

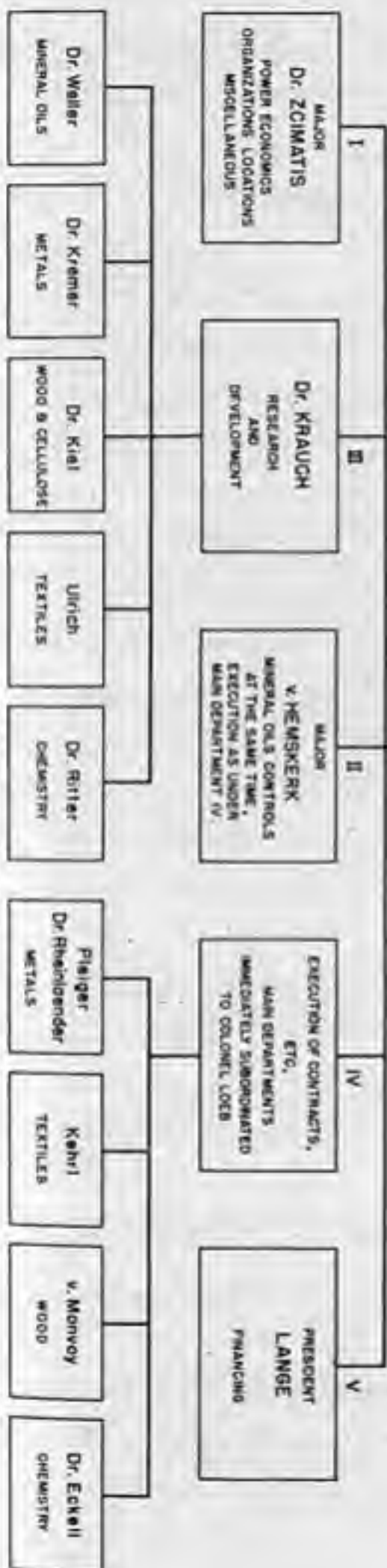
In 1936, Krauch joined Goering's staff for Raw Materials and Foreign Currency which had just been set up, and was put in charge of the Research and Development Department. When this staff was absorbed into the Office of the Four-Year Plan, headed by Goering, Krauch retained the same position in the Office for German Raw Materials and Synthetics. This office was later renamed the Reich Ministry of Economics.

Shortly after the announcement of the Four-Year Plan, in September 1936, Hitler appointed Goering as commissioner to carry out the plan. Goering appointed seven men to assist him and placed each in charge of a separate department, such as Labor Allocation, Agricultural Production, Price Control, etc. Colonel Loeb was placed

in charge of the office for German Raw Materials and Synthetics. Under Loeb were five departments, over four of which Loeb appointed subordinate executives. The fifth was retained under Loeb's personal direction. The Defendant Krauch, being one of these four subordinates, was placed in charge of Research and Development. A visual picture of the structure of the Four-Year Plan thus created may be obtained from a chart, Prosecution's Exhibit 425, which is reproduced herewith:

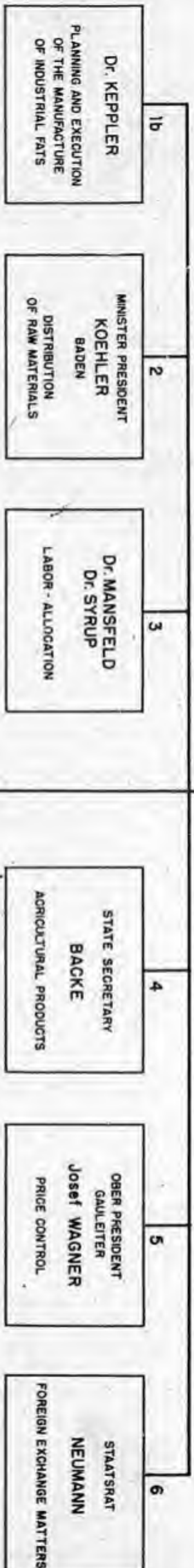


MINISTER PRESIDENT GENERALHEINRICH  
GOERING  
COMMISSIONER FOR THE FOUR YEAR PLAN

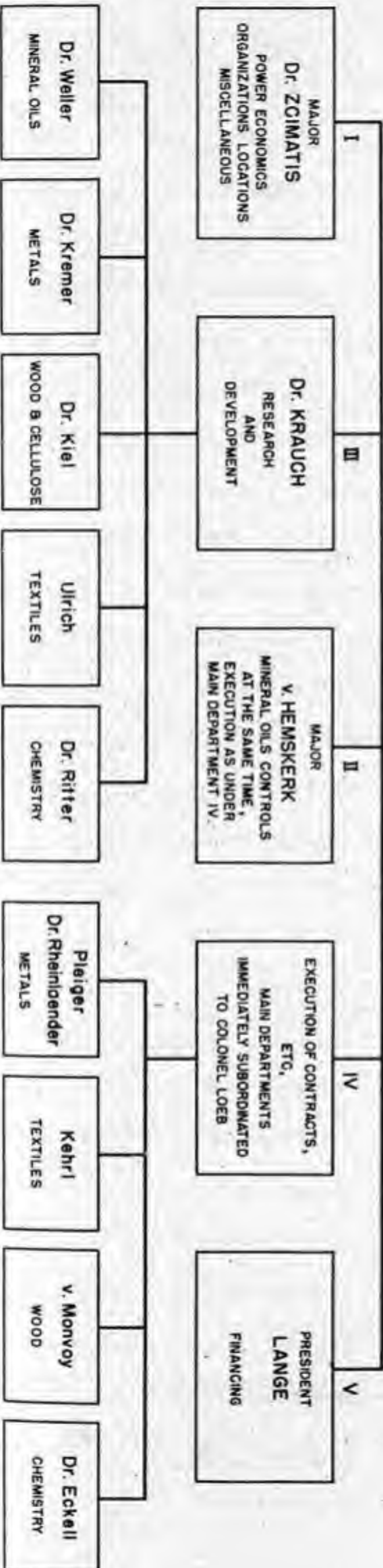


1. JOHN ROSEBERRY, CIV ETO NO 20179, HEREBY CERTIFY THAT I AM THOROUGHLY CONVERSANT WITH THE ENGLISH AND GERMAN LANGUAGES AND THAT THE ABOVE IS A TRUE AND CORRECT TRANSLATION OF THE DOCUMENT NO. NI - 4708.  
18 AUGUST 1947

MASTER PRESIDENT GENERALOBERST  
**GOERING**  
COMMISSIONER FOR THE FOUR YEAR PLAN



COLONEL OF THE GENERAL STAFF  
**LOEB**  
OFFICE FOR GERMAN RAW AND SYNTHETIC  
MATERIALS



CERTIFICATE OF TRANSLATION  
I, JOHN FOSBERY, CIV. ETO NO. 20179, HEREBY CERTIFY THAT I AM THOROUGHLY CONVERSANT WITH THE ENGLISH AND GERMAN LANGUAGES AND THAT THE ABOVE IS A TRUE AND CORRECT TRANSLATION OF THE DOCUMENT NO. NI - 4706.  
18 AUGUST 1947

In 1938, Hitler and Goering decided to step up production under the Four-Year Plan and, to accomplish this, appointed from time to time at least nine Special Plenipotentiaries with limited duties and authority. In July 1938, Krauch was appointed Plenipotentiary General for Special Questions of Chemical Production. Under this appointment it became his task to supervise as an expert the development of the chemical industry in furtherance of the Four-Year Plan. However, the Army Ordnance Office and the Reich Ministry of Economics determined the requirements for individual chemical production. Later the Ministry of Armament assumed this authority. Plans for the expansion of existing plants or the setting up of new plants came within the province of Krauch. But even such plans could not be executed without first having been approved by the Plenipotentiary General for the Building Industry and the Plenipotentiary for Labor. Krauch was not authorized to decide questions relating to current chemical production. Neither could he issue production orders or interfere with the allocation of production. Thus it appears his authority was limited largely to giving expert opinions on technical development, recommending plans for the expansion or erection of plants, and general technical advice in the chemical field.

Judge Morris will continue with the reading of the Judgment.

JUDGE MORRIS: The evidence is clear that Krauch did not participate in the planning of aggressive wars. The plans were made by and within a closely guarded circle. The meetings were secret. The information exchanged was confidential. Krauch was far beneath membership in that circle. No opportunity was afforded to him to participate in the planning, either in a general way or with regard to any of the specific wars charged in Count One.



The record is also clear that Krauch had no connection with the initiation of any of the specific wars of aggression or invasions in which Germany engaged. He was informed of neither the time nor method of initiation. The evidence that most nearly approaches Krauch is that pertaining to the preparation for aggressive war. After World War I, Germany was totally disarmed. She was stripped of war material and the means of producing it. Immediately upon the acquisition of power by the Nazis they proceeded to rearm Germany, secretly and inconspicuously at first. As the rearmament program grew, so also did the boldness of Hitler with reference to rearmament. Rearmament took the course, not only of creating an army, a navy, and an air force, but also of coordinating and developing the industrial power of Germany so that its strength might be utilized in support of the military in event of war. The Four-Year Plan, initiated in 1936, was a plan to strengthen Germany as both a military and an economic power, although, in its introduction to the German people, the military aspect was kept in the background.

In order to conceal Germany's growing military power, strict measures were undertaken to impose secrecy, not only regarding military matters, but also regarding Germany's growing industrial strength. This served two purposes; it tended to conceal the true facts from the world and from the German public; it also kept the people who were actually participating in rearmament from learning of the progress being made outside of their own specific fields of endeavor, and kept them in ignorance of the actual state of Germany's military strength. The dictatorial system was in full control. Even people in high places were kept in ignorance and were not permitted to disclose to each other the extent of their individual activities in behalf of the Reich. A striking example of this is Koitel's objection to Krauch's appointment as Plenipotentiary General for Special Questions of Chemical Production, on the ground that Krauch, as a man of

industry and not of the military, should not obtain insight into armament fields. He pointed out that anyone in that position might learn how many divisions were being set up in the army and what plans were being made for bomber squadrons. The evidence shows that, although Krauch was appointed over the objection of Keitel, he was never fully trusted by the military. His functions and authority were limited to fields bordering on military affairs. He could not act without the cooperation of the Army Ordnance Office. The evidence does not show that anyone told Krauch that Hitler had a plan or plans to plunge Germany into aggressive war. Moreover, the positions that Krauch held with reference to the government did not, necessarily, result in the acquisition by him of such knowledge.

The IMT stated that, "Rearmament of itself is not criminal under the Charter." It is equally obvious that participation in the rearmament of Germany was not a crime on the part of any of the defendants in this case, unless that rearmament was carried out, or participated in, with knowledge that it was a part of a plan or was intended to be used in waging aggressive war. Thus we come to the question which is decisive of the guilt or innocence of the defendants under Courts One and Five — the question of knowledge.

We have already discussed common knowledge. There was no such common knowledge in Germany that would apprise any of the defendants of the existence of Hitler's plans or ultimate purpose.

It is contended that the defendants must have known from events transpiring within the Reich that what they did in aid of rearmament was preparing for aggressive war. It is asserted that the magnitude of the rearmament effort was such as to convey that knowledge. Germany was re-arming so rapidly and to such an extent that, when viewed in retrospect in the light of subsequent events, armament production might be said to impute knowledge that it was in excess of the requirements for defense. If we

were trying military experts, and it was shown that they had knowledge of the extent of rearmament, such a conclusion might be justified. None of the defendants, however, were military experts. They were not military men at all. The field of their life-work had been entirely within industry and mostly within the narrower field of the chemical industry with its attendant sales branches. The evidence does not show that any of them knew the extent to which general rearmament had been planned, or how far it had progressed at any given time. There is likewise no proof of their knowledge as to the armament strength of neighboring nations. Effective armament is relative. Its efficacy depends upon the relative strength with respect to the armament of other nations against whom it may be used either offensively or defensively.

The fields in which Farben was active were those of synthetic rubber, gasoline, nitrogen, light metals, and, to some extent, through an affiliated company, explosives. The defendants contend that in the first three fields their primary purpose was to serve civilian needs. Hitler was building autobahns and was encouraging the assembly-line production of small automobiles. A large increase in the demand for tires was taking place. The German army was, of course, interested in more and better tires. It collaborated with Farben in expanding rubber production and in testing tires made from Buna rubber. The production of gasoline likewise received military encouragement. Experimentation and production in the high-octane processes was particularly for the benefit of the air force.

Nitrogen is a product in great demand for agriculture in peacetime. The impoverished German soil required much fertilization in order to make it produce needed food for a country that was independent to a substantial degree upon imports for the nourishment of its people. Nitrogen also is a basic and indispensable element in the making of most explosives. Its



production can readily be turned from the needs of peace to those of war. The Reich, therefore, encouraged Farben to greatly expand its facilities for producing nitrogen. Light metals had their peacetime uses. They were also war necessities, particularly in the production of airplanes. The Defense, however, points out that the airplane itself is not always an instrument of war but is used as a medium of peacetime transportation.

The Luftwaffe, however, was not a peace-time organization. It utilized the coming war arm of modern nations. The defendants, who participated in the expansion of light metal production capacity, in cooperation with Luftwaffe officials, of course knew that thereby they were strengthening Germany's war potential. Similar knowledge must be attributed to those who participated in the expansion of Farben's capacity to produce Buna rubber, gasoline and nitrogen. It was all a part of an over-all plan or program to strengthen Germany in the fields of economy and rearmament. To the extent that the activities of the defendants through the mediums just described contributed materially to the rearmament of Germany, the defendants must be charged with knowledge of the immediate result. The evidence is not so clear as to Farben's responsibility for the increase in production of explosives. The initiative in this field clearly lay with the Reich but Farben aided the production by furnishing both experts and capital for the expansion of explosive enterprises, and, to that extent, at least participated in rearmament. The Prosecution, however, is confronted with the difficulty of establishing knowledge on the part of the defendants not only of the rearmament of Germany, but also that the purpose of rearmament was to wage aggressive war. In this sphere the evidence degenerates from proof to mere conjecture. The defendants may have been, as some of them undoubtedly were, alarmed at the accelerated pace that armament was taking. Yet even Krauch, who participated in the Four-Year Plan within the chemical field, undoubtedly did not realize that, in addition to strengthening Germany, he was participating in making the nation ready for

a planned attack of an aggressive nature. Krauch did not figure in the planning of the production of any of the items that we have discussed until about the middle of the year 1938. Production planning was carried on by the planning department of the Reich Office for Economic Development, which was not subordinated to Krauch's supervision. Upon being informed by Loeb as to statistics with respect to production and the time required for accomplishment, Krauch reached the conclusion that the figures were to a large extent erroneous and misleading and so informed Goering, who asked for Krauch's comment. Krauch then produced what is known as the Karinhall Plan, which provided for an expansion of facilities and the acceleration of production of mineral oils, Buna rubber, and light metals. In the meantime, Keitel had furnished Goering with figures concerning powder, explosives, and certain raw products used in their production. The correctness of those figures, too, was questioned by Krauch whereupon Goering called upon Krauch to collaborate with the Army Ordnance Office in preparing an accelerated and corrected plan for the production of powder, explosives, and pertinent raw products. The plan thus produced is known as the Schnell or Rush Plan. The evidence is conflicting as to whether Krauch or the Army Armament Office was dominant in determining the questions involved in preparing this plan.

We now reach the next question of whether from Krauch's activities in connection with the Four-Year Plan, the Karinhall Plan, and the Schnell Plan, he may be said to have known that the ultimate objective of Hitler, Goering and the other Nazi chiefs was to wage a war or wars of aggression. On 29 April 1939, Krauch rendered a report to his superior Goering and to the General Council, setting forth at length the goals to be reached in the spheres of mineral oil, rubber, light metals, as well as gunpowder, explosives, and chemical-warfare agents under the Karinhall and Schnell

plans. With respect to mineral oil, which he breaks down into gasoline, Diesel fuel, heating and lubricating oil, the final target is set for 1943. In his analysis he gives the peace-time requirements for 1943, which is scarcely an indication that he was aware of Hitler's already existing plan to attack Poland in the fall of 1939. The plans for Buna rubber also include the year 1943. In the field of light metals the temporary goal for aluminum would be reached in 1942 according to the plan, while a similar goal was set for magnesium. In justifying his production objectives, Krauch says: "The German expansion target figures for mineral oils are about 13.8 million tons as compared with the French mobilization requirements of about 13 million tons and the British mobilization requirements of about 30 million tons.

"The requirements for fuel oil for the British Navy alone amount to about 12 million tons, i.e., nearly as much as the entire German mobilization requirements.

"The rubber requirements of 120,000 tons per year are directly connected with the German motorization and thereby again with the mineral oil project. The consumption of crude rubber for England was, in 1938, already about 105,000 tons; for France about 60,000 tons.

"The light metals are of great importance, not only for the mobilization of the Air Force, but also for peace-time requirements for the replacement of scarce metals. After completion, target figures for aluminum will reach 250,000 tons, this is half of the present world production and ten times the present British output. The output of magnesium will, after its completion, amount to thrice the



present world production." The production goal for powder and explosives was expected to be reached by the end of 1940; that of chemical warfare agents by mid-1942. He points out that the present production capacity of France and Great Britain already exceeds the final target of the Rush Plan. At the end of this report is a conclusion from which the Prosecution has, with emphasis, quoted several passages as strong evidence of Krauch's knowledge of Hitler's intentions to wage aggressive war. This conclusion is in the nature of a commentary on Germany's position of disadvantage with respect to her economic and military situation. The thoughts expressed are none too coherent and are, at times, somewhat inconsistent. It stresses the necessity and importance of strengthening Germany in the military and economic fields. There are some expressions that are consistent with a war like intention, but to say that these statements impute to the maker a knowledge of impending aggressive war on the part of Germany, is to draw from them inferences that are not justified. He recommends the formation of a uniform major economic bloc consisting of the "four European anti-comintern partners, which Yugoslavia and Bulgaria will soon have to join. Within this bloc there must be a building up and direction of the military economic system from the point of view of defensive warfare by the coalition."

Further on he makes this statement, that is emphasized by the Prosecution: "It is essential for Germany to strengthen its own war potential as well as that of its allies to such an extent that the coalition is equal to the efforts of practically the rest of the world. This can be achieved only by new, strong, and combined efforts by all of the allies, and by expanding and improving the greater economic domain corresponding to the improved raw materials basis of the coalition, peaceably at first, to the Balkans and Spain."

Considering the whole report, it seems that Krauch was recommending

plans for the strengthening of Germany which, to his mind, was being encircled and threatened by strong foreign powers, and that this situation might and probably would at some time result in war. But it falls far short of being evidence of his knowledge of the existence of a plan on the part of the leaders of the German Reich to start an aggressive war against either a definite or a probable enemy.

Krauch testified at length in behalf of himself and his co-defendants. He emphatically denied all knowledge of Hitler's purpose to wage aggressive war in general or to attack specific victims. He introduced a large volume of evidence tending to support his position of lack of knowledge of Hitler's purpose to wage aggressive war in general or to attack specific victims. He introduced a large volume of evidence tending to support his position of lack of knowledge, to minimize the importance of his official connections with the Reich, and to relieve his co-defendants of responsibility for his acts. To attempt to summarize all the evidence for and against Krauch under Counts One and Five would lengthen this Judgment to unjustifiable proportions. We have examined the many exhibits in great detail and attempted to give to each proper weight and probative value. This labor has led to the definite conclusion that Krauch did not knowingly participate in the planning, preparation or initiation of an aggressive war.

After the attack on Poland, Krauch stayed at his post and continued to function within those spheres of activity in which he was already engaged. It is contended that these activities amounted to participation in the waging of aggressive war. There is no doubt but that he contributed his efforts in much the same manner and measure as thousands of other Germans who occupied positions of importance below the level of the Nazi civil and military leaders who were tried and condemned by the IMT.

We will treat the participation of all of the defendants, including Krauch, in the waging of aggressive war later on in this Judgment.

With respect to the other defendants, all were further removed from the scene of Nazi governmental activity than was Krauch. Although he was a member of the Vorstand of Farben throughout the entire period of German rearmament and until 1940, he attended no meetings of the Vorstand after 1936 and made no reports either to that body or its subordinate sections or committees concerning his governmental activities. It is unnecessary and would be inappropriate to carry into this Judgment a discussion in detail of the evidence for and against each defendant. But it is proper to comment, to a limited extent, with respect to Farben and some of the defendants who appear to have been dominant members of the Vorstand.

The Defendant Schmitz was Chairman of the Vorstand from 1935 to 1945. He became Chairman of the Central Committee in 1935. He was actively in attendance at many of the meetings of the Technical Committee and the Commercial Committee. These sub-divisions of the Vorstand dealt respectively with technical questions and commercial questions, arising out of the overall administration of the vast Farben organization. As Chairman of the Vorstand he had no special powers. He is frequently described in this record as *primus inter pares*, or, first among equals. His field as an expert was finance, and his opinion with respect to such matters carried great weight with his associates.

In 1933, after Hitler's seizure of power, the heads of many leading enterprises paid formal calls on Hitler. Among them was Bosch, the then Chairman of the Vorstand, whom Schmitz later succeeded. The position of industry at that time is described in the interrogation of Goering (Prosecution's Exhibit #58):

"Q. Would Germany have ever entertained this large program of aggression if they had not had full



support of the industrialists all the way through?

"A. The industrialists are Germans. They had to support their country.

"Q. Were they forced to do so or did they do so voluntarily?

"A. They did it voluntarily but if they would have refused the state would have stepped in.

"Q. Do you think the state would have been strong enough to have forced the big industry into war if it did not want war?

"A. When the call came for war every industry followed without any difficulty from minor convictions."

On 17 December 1936, at a meeting attended by representatives of various firms, including Farben, Goering threatened industry with seizure by the state if it did not show better cooperation with the Four Year Plan.

There is a notable dearth of evidence as to important activities engaged in by Schmitz, particularly during the later years covered by the record. In an attempt to show an early alliance between Farben and Hitler, the Prosecution points out that Farben made substantial donations to the Nazi Party. In February 1933, representatives of most of the leading industrial firms of Germany met in Goering's house in Berlin. Hitler was present. He had already been nominated Chancellor of the Reich. The purpose of the meeting was to secure the support of the industrialists in the coming Reichstag election. Both Hitler and Goering made speeches, outlining Hitler's policies insofar as he disclosed them at that time. At the close of the speeches, Goering sought contributions. Von Schnitzler was the only representative of Farben present at this meeting. Most, if not all, of the firms there represented made substantial contributions to a campaign fund to be used in behalf of parties supporting Hitler. The parties that were to participate in the fund were the National Socialist, the Deutsch-Nationale Volkspartei, and the Deutsche Volkspartei. Farben's

share was RM 400,000, one of the largest contributions made to the fund.

This contribution was made to a movement that had its basic origin in the unemployment and general financial chaos of a world-wide depression. This condition was at its worst in Germany. The masses had flocked to Hitler's standard, misled by his promises of more work, food, and shelter. Industry followed and contributed to the new movement. To say that this contribution indicates a sinister alliance, is to misread the facts as they then existed and to draw from them inferences based upon Hitler's subsequent career. Schmitz, at the time of this meeting and up until 3 March 1933, was in Switzerland, and it does not appear that he had any personal connection with this contribution.

During the period of rearmament Farben continued to contribute substantial sums to the Nazi Party and to its various allied philanthropic and charitable organizations. In the beginning these contributions were, no doubt, voluntary. As Hitler's power grew and the Nazi Party became more arrogant, their complexion changed from contributions to exactions. Schmitz as Chairman of the Vorstand, did not display strong resistance to the demands of the Nazi leaders. Neither did he show enthusiasm for cooperation. He apparently heeded the requests and demands of the Reich when that seemed the politic thing to do, even to the extent of honoring suggestions for contributions to various Nazi programs in substantial amounts.

These circumstances, when applied to the defendant Schmitz individually, or to Farben in general, do not justify an inference of knowledge of Hitler's intention to wage aggressive war.

The defendant von Schnitzler was a leading personality in the commercial group of Vorstand members. In 1937, he became Chairman of the Commercial Committee. One of the chief responsibilities of this committee was the general supervision of sales of Farben's commodities. This embraced not only matters of domestic sales and finance, but also exports, foreign

exchange, and sales agencies in many countries. After German conquests were under way, the Commercial Committee in general and the Defendant von Schnitzler in particular were active in expanding the Farben interests into conquered countries. He was the salesman and diplomat of Farben. Von Schnitzler has been in confinement since he was arrested on 7 May 1945. He was interrogated many times during the course of his imprisonment. His utterances, some of great length, appear in forty-five written statements, affidavits and interrogations, a number of which have been introduced in evidence. His counsel sought to have all of these statements stricken upon the ground that they were given under threats, duress, and coercion. He claimed that his client had been mistreated, insulted, and humiliated while in prison, and that this treatment resulted in his mental confusion to the extent that he eagerly cooperated with the interrogators in the hope of better treatment and with considerable disregard in many instances for actual facts. We do not think that the showing discloses such duress as would warrant us in excluding this evidence upon the ground that the statements were involuntary, although the circumstances under which they were given undoubtedly greatly depreciate their probative value. The statements themselves disclose that von Schnitzler was seriously disturbed and no doubt somewhat mentally confused by the calamities that had befallen Germany, his firm of Farben, and himself personally. He was extremely voluble. He talked and gave statements in writing to his interrogators with seeming eagerness and in such detail as to both facts and conclusions that we regard selected passages that contain seemingly damaging recitals as having questionable evidentiary value. Some of his later statements change and purport to correct former ones. His eagerness to tell his interrogators what he thought they wanted to know and hear is apparent throughout; as, for instance, this statement which has been emphasized by



the Prosecution: "In June or July 1939, I. G. Farben and all heavy industries well knew that Hitler had decided to invade Poland if Poland would not accept his demands."

Von Schnitzler did not take the witness stand. Pursuant to a ruling of this Tribunal during the course of the trial, his statements are evidence only as to the naked and are excluded from consideration in determining the guilt or innocence of other defendants. Aside from these statements, the evidence against von Schnitzler does not approach that required to establish guilty knowledge. He, like other members of the Vorstand, played a part in Farben's cooperation along with other industries in connection with the Four-Year Plan, although, being a specialist in the commercial field, he did not directly participate in the expansion of Farben production. He was particularly concerned with foreign currency and markets. After the outbreak of the war he approved measures of cooperation between the Intelligence Department of the Army Ordnance Office and Farben agents abroad. We are unable to conclude that either his activities or those of the agents were of particular value in the waging of war. When we sum up all of von Schnitzler's activities, it appears that he was not even remotely connected with the planning, preparation, and initiation of any of Hitler's aggressive wars, and that his support of the war after it broke out did not exceed that of the normal, substantial German citizen and businessman.

Ter Meer was one of the dominant leaders of the Vorstand. His activities were chiefly in the technical field. He was Chairman of the Technical Committee (TEA) from 1933 to 1945. He was Chief of Sparte II from 1929 to 1945. His was probably the greatest influence of all the Vorstand members in the growth and expansion of Farben production during the fifteen years that preceded the collapse of Germany in 1945. Most of Farben's cooperation with the Four-Year Plan was technical and, therefore, came within the sphere of Ter Meer's

activities and influence.

In view of the emphasis that is laid upon participation in the rearmament program as being evidence, tending to show knowledge of Hitler's aggressive war intentions, it is remarkable how few contacts ter Meer had with the Nazi leaders. It would seem that if any member of the Farben Vorstand was permitted to learn of Hitler's intentions, ter Meer should have had access to the circle of power. Not only is there lack of proof that ter Meer had access to knowledge of Hitler's intentions with respect to aggressive war, but certain conduct of Farben in fields in which ter Meer was active are inconsistent with such knowledge. On 1 April 1938, Farben and the Imperial Chemical Industries, the dominant chemical firm of Great Britain, jointly founded a dyestuffs plant in Trafford Park, England. These two firms cooperated in the construction work of this plant until the last days of August 1939. Prior to the outbreak of the war, Farben had begun to build a plant of its own near Rouen, France, for the manufacture of textile auxiliary products. In July 1939, Farben decided to begin pharmaceutical production in France. The war intervened before active steps could be taken to carry out this decision. In 1938 and 1939 substantial amounts of nitrogen were delivered to a British firm in England.

It is asserted that the development of synthetic rubber, a product used by the Wehrmacht to facilitate its movement, was an important step in rearmament and an indication of the defendants' knowledge of Hitler's intentions to wage aggressive war. The value of synthetic rubber as a war potential may not be overlooked. But its value as evidence of criminal knowledge is brought into serious question when the failure of Farben to closely guard its process secrets is considered. Buna products were exhibited at the Paris World's Fair in 1937. Scientific lectures on this product were given to the International Chemical Congress in Rome in 1938, before a Chemical

Industrial Society in Paris in 1939, and also in the same year before the American Chemical Society in Baltimore, Maryland.

Farben arranged with an American firm for testing tires made of synthetic rubber. These tests were continued up until the outbreak of war. Ter Meer planned a trip to America in the fall of 1939 in connection with these tests. He was to be accompanied by the Defendants von Kierdem and Ambros, as well as another Farben official. The outbreak of the war interfered with this trip.

In 1938 and subsequent years, Farben concluded sixteen license agreements with American firms. One of these agreements covered a product of war importance, namely, phosphorus. On 1 August 1939, representatives of a Canadian chemical firm were permitted to visit the Ludwigshafen plant of Farben in connection with negotiations for licenses and information concerning the production of ethylene from acetylene. In August 1939, two chemists of the American firm Carbide & Carbon Chemical Company were permitted to visit the Farben plant at Hoechst, the Metallgesellschaft, and the Degussa plant in Frankfurt/Main. This conduct on the part of Ter Meer and his associates is inconsistent with knowledge of approaching aggressive war on the part of men who are charged with participating in the preparation for such war.

The Indictment charges that Farben, through its foreign economic policy, participated in weakening Germany's potential enemies and that Farben carried on propaganda intelligence and espionage activities for the benefit of the Reich. It is particularly emphasized that Farben entered into many contracts with major industrial concerns throughout the world dealing with various phases of experimentation, production, and markets in fields in which Farben found competition. All of these contracts are lumped under the much-abused term "cartals." Many of these agreements were essential licenses by which Farben permitted foreign firms to manufacture products that were



protected by Farben patents. This appears to be a common practice among large business concerns throughout the world, and the fault, if any, would seem to lie with national and international patent law rather than with the firms that avail themselves of the protection which the law affords. Furthermore, we are unable to find the counterpart of the Sherman Anti-Trust Act either in international law or the national statutes of major European powers. It has not been pointed out that any contract made by Farben in and of itself constituted a crime. It is, nevertheless, argued that by virtue of these contracts Farben stifled the industrial development of foreign countries. Agreements between the Standard Oil Company of New Jersey and Farben regarding the development and production of Buna rubber in the United States are pointed to as a specific example. The two companies agreed to exchange information regarding the results of their experiments in this field. Farben outstripped its competitors in experimentation and in methods of production. The Reich had financed Farben to a material extent in the development of Buna and criticized the contracts which Farben had made. In reply to this criticism, Farben, through the Defendant ter Meer, advised the Reich, in substance, that Farben was not complying with its contract in that it was not furnishing to the American concerns the results of its most recent and up-to-date experiments. Ter Meer testified that this communication to the Reich was false and was made for the purpose of avoiding criticism and interference by government officials, and that Farben did, in fact, carry out its contract in good faith. He is supported in the latter statement by the affidavits of two Standard Oil officials who testified as to the great value of the information given by Farben. The record shows no information that was not divulged. It is true that the development of the manufacture of synthetic rubber in the United

States did not keep pace with that in Germany. Natural rubber was then available in the United States at a cost below that of the production of synthetic rubber. We cannot assume, in the absence of more specific evidence, that the failure of the United States to develop the production of synthetic rubber was due to the withholding of information by Farben.

In the field of propaganda, intelligence, and espionage, we find that there was activity on the part of Farben's agents with reference to industrial and commercial matters. German industry and the superiority of German goods were advertised and extolled. Some praise of the German government appeared from time to time, but we cannot reach the conclusion that the advertising campaigns of Farben were essentially for the purpose of emphasizing Nazi ideology. Neither do we give great significance to the fact that the agents were instructed to avoid advertising in journals hostile to Germany. Such advertising policy would seem compatible with business judgment and would be without political significance. The so-called espionage activities of the Farben agents were confined to commercial matters. These agents from time to time reported to Farben information obtained with regard to industrial and commercial development in fields of Farben business interests, particularly with regard to competitors. There is no evidence of reports concerning military or armament matters. Some of the information received by Farben from its agents was turned over to the Reich officials. The evidence clearly shows that Farben was constantly under pressure to gather and furnish to the Reich information concerning industrial developments and production in foreign countries. Farben's reluctance to comply, even to the full extent of information actually received, indicates a lack of cooperation which negates participation in a conspiracy or knowledge of plans on the part of Hitler to wage aggressive war.

We have discussed the Defendant Krauch, who held certain official positions with both Farben and the Reich; the Defendant Schmitz, who was Chairman of the Vorstand; the Defendant von Schützler, who was the leading man in the commercial group of Farben; and the Defendant ter Meer, who was the foremost technical expert and who also exerted considerable influence in the administration of affairs of the organization. In each instance we find that they, in more or less important degrees, participated in the rearmament of Germany by contributing to her economic strength and the production of certain basic materials of great importance in the waging of war. The evidence falls far short of establishing beyond a reasonable doubt that their endeavors and activities were undertaken and carried out with the knowledge that they were thereby preparing Germany for participation in an aggressive war or wars that had already been planned either generally or specifically by Adolf Hitler and his immediate circle of Nazi civil and military fanatics.

The remaining defendants, consisting of fifteen former members and four non-members of the Vorstand, occupied positions of lesser importance than the defendants we have mentioned. Their respective fields of operation were less extensive and their authority of a more subordinate nature. The evidence against them with respect to aggressive war is weaker than that against those of the defendants to whom we have given special consideration. No good purpose would be served by undertaking a discussion in this Judgment of each specific defendant with respect to his knowledge of Hitler's aggressive aims.

#### Waging Wars of Aggression:

There remains the question as to whether the evidence establishes that any of the defendants are guilty of "waging a war of aggression" within the meaning of Article II, 1, (a) of Control



Council Law No. 10. This calls for an interpretation of the quoted clause. Is it an offense under international law for a citizen of a state that has launched an aggressive attack on another country to support and aid such war efforts of his government, or is liability to be limited to those who are responsible for the formulation and execution of the policies that result in the carrying on of such a war?

It is to be noted in this connection that the express purpose of Control Council Law No. 10, as declared in its Preamble, was to "give effect to the terms of the Moscow Declaration of 30 October 1943, and the London Agreement of 8 August 1945, and the charter issued pursuant thereto." The Moscow Declaration gave warning that the "German officers and men and members of the Nazi Party" who were responsible for "atrocities, massacres and cold-blooded mass executions" would be prosecuted for such offenses. Nothing was said in that declaration about criminal liability for waging a war of aggression. The London Agreement is entitled an agreement "for the prosecution and punishment of the major war criminals of the European Axis." There is nothing in that agreement or in the attached Charter to indicate that the words "waging a war of aggression", as used in Article II (a) of the latter, were intended to apply to any and all persons who aided, supported, or contributed to the carrying on of an aggressive war; and it may be added that the persons indicted and tried before the IMT may fairly be classified as "major war criminals" insofar as their activities were concerned. Consistent with the express purpose of the London Agreement to reach the "major war criminals", the Judgment of the IMT declared that "mass punishments should be avoided."

To depart from the concept that only major war criminals -- that is, those persons in the political, military, and industrial fields, for example, who were responsible for the formulation and execution

of policies -- may be held liable for waging wars of aggression would lead far afield. Under such circumstances there could be no practical limitation on criminal responsibility that would not include, on principle, the private soldier on the battlefield, the farmer who increased his production of foodstuffs to sustain the armed forces, or the housewife who conserved fats for the making of munitions. Under such a construction the entire manpower of Germany could, at the uncontrolled discretion of the indicting authorities, be held to answer for waging wars of aggression. That would, indeed, result in the possibility of mass punishments.

There is another aspect of this problem that may not be overlooked. It was urged before the IMT that international law had theretofore concerned itself with the actions of sovereign states and that to apply the Charter to individuals would amount to the application of ex post facto law. After observing that the offenses with which it was concerned had long been regarded as criminal by civilized peoples, the high Tribunal said: "Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced." The extension of punishment for crimes against peace by the IMT to the leaders of the Nazi Military and Government was, therefore, a logical step. The acts of a government and its military power are determined by the individuals who are in control and who fix the policies that result in those acts. To say that the government of Germany was guilty of waging aggressive war but not the men who were in fact the government and whose minds conceived the plan and perfected its execution would be an absurdity. The IMT, having accepted the principle that the individual could be punished, then proceeded to the more difficult task of deciding which of the defendants before it were responsible in fact.

In this case we are faced with the problem of determining the

guilt or innocence with respect to the waging of aggressive war on the part of men of industry who were not makers of policy but who supported their government during its period of rearmament and who continued to serve that government in the waging of war, the initiation of which has been established as an act of aggression committed against a neighboring nation. Hitler launched his war against Poland on 1 September 1939. The following day France and Britain declared war on Germany. The IMT did not determine whether the latter were waged as aggressive wars on the part of Germany. Neither must we determine that question in this case. We seek only the answer to the ultimate question: Are the defendants guilty of crimes against peace by waging aggressive war or wars? Of necessity, the great majority of the population of Germany supported the waging of war in some degree. They contributed to Germany's power to resist, as well as to attack. Some reasonable standard must, therefore, be found by which to measure the degree of participation necessary to constitute a crime against peace in the waging of aggressive war. The IMT fixed that standard of participation high among those who lead their country into war.

The defendants now before us were neither high public officials in the civil government nor high military officers. Their participation was that of followers and not leaders. If we lower the standard of participation to include them, it is difficult to find a logical place to draw the line between the guilty and the innocent among the great mass of German people. It is, of course, unthinkable that the majority of Germans should be condemned as guilty of committing crimes against peace. This would amount to a determination of collective guilt to which the corollary of mass punishment is the logical result for which there is no precedent in international law and no justification in human relations. We cannot say that a private citizen shall be placed in the position of being compelled to determine



in the heat of war whether his government is right or wrong, or, if it starts right, when it turns wrong. We would not require the citizen, at the risk of becoming a criminal under the rules of international justice, to decide that his country has become an aggressor and that he must lay aside his patriotism, the loyalty to his homeland, and the defense of his own fireside at the risk of being adjudged guilty of crimes against peace on the one hand, or of becoming a traitor to his country on the other, if he makes an erroneous decision based upon facts of which he has but vague knowledge. To require this of him would be to assign to him a task of decision which the leading statesmen of the world and the learned men of international law have been unable to perform in their search for a precise definition of aggression.

Strive as we may, we are unable to find, once we have passed below those who have led a country into a war of aggression, a rational mark dividing the guilty from the innocent. Lest it be said that the difficulty of the task alone should not deter us from its performance, if justice should so require, let it be said that the mark has already been set by that Honorable Tribunal in the trial of the international criminals. It was set below the planners and leaders, such as Goering, Hess, von Ribbentrop, Rosenberg, Keitel, Frick, Funk, Doenitz, Raeder, Jodl, Seyss-Inquart, and von Neurath, who were found guilty of waging aggressive war, and above those whose participation was less and whose activity took the form of neither planning nor guiding the nation in its aggressive ambitions. To find the defendants guilty of waging aggressive war, would require us to move the mark without finding a firm place in which to reset it. We leave the mark where we find it, well satisfied that individuals who plan and lead a nation into and in an aggressive war should be held guilty of crimes against peace, but not those who merely follow the leaders and whose participations, like those of Speer, "were in aid

of the war effort in the same way that other productive enterprises aid in the waging of war." (IMT Judgment, Volume 1, page 330.)

Conspiracy:

We will now give brief consideration to Count Five, which charges participation by the defendants in the common plan or conspiracy. We have accepted as a basic fact that a conspiracy did exist. The question here is whether the defendants or any of them became parties thereto.

It is appropriate here to quote from the IMT Judgment:

"The Prosecution says, in effect, that any significant participation in the affairs of the Nazi Party or Government is evidence of a participation in a conspiracy that is in itself criminal. Conspiracy is not defined in the Charter. But in the opinion of the Tribunal the conspiracy must be clearly outlined in its criminal purpose. It must not be too far removed from the time of decision and of action. The planning, to be criminal, must not rest merely on the declarations of a party program, such as are found in the 25 points of the Nazi Party, announced in 1920, or the political affirmations expressed in 'Mein Kampf' in later years. The Tribunal must examine whether a concrete plan to wage war existed, and determine the participants in that concrete plan." (Vol. 1, page 225, IMT Judgment).

In order to be participants in a common plan or conspiracy, it is elementary that the accused must know of the plan or conspiracy. In this connection we quote from a case cited by both the Prosecution and Defense, *Direct Sales Company vs. United States*, 319 U.S. 703, 63 S.Ct. 1265. In discussing *United States vs. Falcone*, 311 U.S. 205, 61 S.Ct. 204, 85 L.ed. 128, the Supreme Court of the United States said:

"That decision comes down merely to this, that one does not become a party to a conspiracy by aiding and abetting it, through sales of supplies or otherwise, unless he knows of the conspiracy; and the inference of such knowledge cannot be drawn merely from knowledge the buyer will use the goods illegally."

Further along in the opinion it is said with regard to the intent of a seller to promote and cooperate in the intended illegal use of goods by a buyer:

"This intent, when given effect by overt act, is the gist of conspiracy. While it is not identical with mere knowledge that another purposes unlawful action, it is not unrelated to such knowledge. Without the knowledge, the intent cannot exist. (United States vs. Falcone, supra.) Furthermore, to establish the intent, the evidence of knowledge must be clear, not equivocal. (Ibid.) This, because charges of conspiracy are not to be made out by piling inference upon inference, thus fashioning what, in that case, was called a dragnet to draw in all substantive crimes."

Count Five charges that the acts and conduct of the defendants set forth in Count One and all of the allegations made in Count One are incorporated in Count Five. Since we have already reached the conclusion that none of the defendants participated in the planning or knowingly participated in the preparation and initiation or waging of a war or wars of aggression or invasions of other countries, it follows that they are not guilty of the charge of being parties to a common plan or conspiracy to do these same things.

We find that none of the defendants is guilty of the crimes set forth in Counts One and Five. They are, therefore, acquitted under said Counts.



THE PRESIDENT: Judge Hebert will continue reading of the Judgment.

JUDGE HEBERT:

COUNT TWO

Substance of the Charge:

Under Count Two of the Indictment all of the defendants are charged with the commission of war crimes and crimes against humanity. It is alleged that war crimes and crimes against humanity, as defined by Control Council Law No. 10, were committed in that the defendants, during the period from 12 March 1938 to 8 May 1945, acting through the instrumentality of Farben, participated in the "plunder of public and private property, exploitation, spoliation, and other offenses against property, in countries and territories which came under the belligerent occupation of Germany in the course of its invasions and aggressive wars." The charge recites that the particulars set forth constitute "violations of the laws and customs of war, of international treaties and conventions, including Articles 46-56, inclusive, of the Hague Regulations of 1907, of the general principles of criminal law as derived from the criminal laws of all civilized nations, of the internal penal laws of the countries in which such crimes were committed, and of Article II of Control Council Law No. 10."

The Indictment charges that the acts were committed unlawfully, wilfully, and knowingly and that the defendants are criminally responsible "in that they were principals in, accessories to, ordered, abetted, took a consenting part in, were connected with plans and enterprises involving, and were members of organizations or groups, including Farben, which were connected with the commission of said crimes."

Proceeding from the general findings of the IMT on the subject of plunder and pillage, the Indictment further charges: "Farben marched with the Wehrmacht and played a major role in Germany's program for acquisition by conquest. It used its expert technical knowledge and resources to plunder and exploit the chemical and related industries of

Europe, to enrich itself from unlawful acquisitions, to strengthen the German war machine and to assure the subjugation of the conquered countries to the German economy. To that end, it conceived, initiated, and prepared detailed plans for the acquisition by it, with the aid of German military force, of the chemical industries of Austria, Czechoslovakia, Poland, Norway, France, Russia, and other countries." The particulars of the alleged acts of plunder and spoliation are enumerated in sub-paragraphs A through F of Count Two, and need not be repeated here.

The offenses alleged in Count Two are charged, not only as war crimes, but also as crimes against humanity. By a ruling entered on 22 April 1948, the Tribunal sustained a motion filed by the defense challenging the legal sufficiency of Count Two, sub-paragraphs A and B, of the Indictment (paragraphs 90 to 96 inclusive), as applied to the charges of plunder and spoliation of properties located in Austria and in the Sudetenland of Czechoslovakia. The Tribunal ruled that the particulars referred to, even if fully established by the proof, would not constitute crimes against humanity, as the acts alleged related wholly to offenses against property. The immediate ruling of the Tribunal was limited to the Skoda-Wetzlar and Aussig-Falkenau acquisitions then under consideration, but the reasoning upon which this portion of the ruling was based is equally applicable to Count Two of the Indictment in its entirety insofar as crimes against humanity are charged.

The Control Council Law recognizes crimes against humanity as constituting criminal acts under the following definition:

"(c) Crimes against Humanity. Atrocities and offenses, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds whether or not in violation of the domestic laws

of the country where perpetrated."

We adopt the interpretation expressed by Military Tribunal IV in its judgment in the case of the United States of America vs. Friedrich Flick, et al., concerning the scope and application of the quoted provision in relation to offenses against property. That Tribunal said:

"....The 'atrocities and offenses' listed therein, 'murder, extermination,' etc., are all offenses against the person. Property is not mentioned. Under the doctrine of ejusdem generis the catch-all words 'other persecutions' must be deemed to include only such as affect the life and liberty of the oppressed peoples. Compulsory taking of industrial property, however reprehensible, is not in that category. It may be added that the presence in this section of the words 'against any civilian population,' recently led Tribunal III to 'hold that crimes against humanity as defined in C.C. Law 10 must be strictly construed to exclude isolated cases of atrocity or persecution whether committed by private individuals or by governmental authority.' (U.S.A. vs Altstoetter et al, decided 4 December 1947). The transactions before us, if otherwise within the contemplation of Law 10 as crimes against humanity, would be excluded by this holding."

(Transcript page 11013).

In accordance with this view, the other particulars of plunder, exploitation, and spoliation, as charged in paragraphs C, D, E, and F of Count Two of the Indictment, will be considered only as charges alleging the commission of war crimes.

It is to be also observed that this Tribunal, in the above-mentioned ruling of 22 April 1948, further held that the particulars set



forth in Sections A and B of Count Two, as to property in Austria and the Sudetenland, would not constitute war crimes, as the incidents occurred in territory not under the belligerent occupation of Germany.

We held that, as a state of actual warfare had not been shown to exist as to Austria, incorporated into Germany by the Anschluss, or as to the Sudetenland, covered by the Munich Pact, the Hague Regulations never became applicable. In so ruling, we do not ignore the force of the argument that property situated in a weak nation which falls a victim to the aggressor because of incapacity to resist should receive a degree of protection equal to that in cases of belligerent occupation when actual warfare has existed. The Tribunal is required, however, to apply international law as we find it in the light of the jurisdiction which we have under Control Council Law No. 10. We may not reach out to assume jurisdiction. Unless the action may be said to constitute a war crime as a violation of the laws and customs of war, we are powerless to consider the charges under our interpretation of Control Council Law No. 10, regardless of how reprehensible conduct in regard to these property acquisitions may have been. The situation is not the same here in view of the limited jurisdiction of this Tribunal, as it would be if, for example, the criminal aspects of these transactions were being examined by an Austrian or other court with a broader jurisdiction.

In harmony with this ruling, the charges remaining to be disposed under Count Two involve a determination of whether or not the proof sustains the allegations of the commission of war crimes by any defendant with reference to property located in Poland, France, Alsace-Lorraine, Norway, and Russia.

The Law Applicable to Plunder and Spoliation:

The pertinent part of Control Council Law No. 10, binding upon this Tribunal as the express law applicable to the case, is Article II, paragraph (1), sub-section (b), which reads as follows:

"Each of the following acts is recognized as a crime:

. . . . .

"(b) War Crimes. Atrocities or offenses against persons or property constituting violations of the laws or customs of war, including but not limited to, murder, ill treatment or deportation to slave labour or for any other purposes, of civilian population from occupied territory, murder or ill treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity."

(Underscoring supplied)

This quoted provision corresponds to Article 6, Section (b) of the Charter of the IMT, concerning which that Tribunal held that the criminal offenses so defined were recognized as war crimes under international law even prior to the IMT Charter. There is consequently no violation of the legal maxim nullum crimen sine lege involved here. The offense of plunder of public and private property must be considered a well-recognized crime under international law. It is clear from the quoted provision of the Control Council Law that if this offense against property has been committed, or if the proof establishes beyond reasonable doubt the commission of other offenses against property constituting violations of the laws and customs of war, any defendant participating therein with the degree of criminal connection specified in the Control Council Law must be held guilty under this charge of the Indictment.

Insofar as offenses against property are concerned, a principal codification of the laws and customs of war is to be found in the Hague Convention of 1907 and the annex thereto, known as the Hague Regulations.

The following provisions of the Hague Regulations are particularly pertinent to the charges being considered:

"Art. 46. Family honor and rights, individual

lives and private property, as well as religious convictions and practice, must be respected.

Private property cannot be confiscated.

"Art. 47. Pillage is formally prohibited.

"Art. 52. Neither requisition in kind nor services can be demanded from communes or inhabitants except for the necessities of the army of occupation. They must be in proportion to the resources of the country, and of such a nature as not to involve the population in the obligation of taking part in military operations against their own country.

"These requisitions and services shall only be demanded on the authority of the Commander in the locality occupied.

"The requisitions in kind shall, as far as possible, be paid for in ready money; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible.

"Art. 53. An army of occupation can only take possession of the cash, funds, and property liable to requisition belonging strictly to the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property of the State which may be used for military operations.

"All appliances, whether on land, at sea, or in the air adapted for the transmission of news, or for the transport of persons



or things, apart from cases governed by maritime law, as well as depots of arms and, generally, all kinds of war material, even though belonging to Companies or to private persons, are likewise material which may serve for military individuals, but they must be restored at the conclusion of peace, and indemnities paid for them.

.....

"Art. 55. The occupying State shall be regarded only as administrator and usufructuary of the public buildings, real estate, forests, and agricultural works belonging to the hostile State, and situated in the occupied country. It must protect the capital of these properties, and administer it according to the rules of usufruct."

The foregoing provisions of the Hague Regulations are broadly aimed at preserving the inviolability of property rights to both public and private property during military occupancy. They admit of exceptions of expropriation, use, and requisition, all of which are subject to well-defined limitations set forth in the articles. Where private individuals, including juristic persons, proceed to exploit the military occupancy by acquiring private property against the will and consent of the former owner, such action, not being expressly justified by any applicable provision of the Hague Regulations, is in violation of international law.

The payment of a price or other adequate consideration does not, under such circumstances, relieve the act of its unlawful character. Similarly where a private individual or a juristic person becomes a party to unlawful confiscation of public or private property by planning and executing a well-defined design to acquire such property permanently, acquisition under such circumstances subsequent to the confiscation constitutes conduct in violation of the Hague Regulations.

These broad principles deduced from the Hague Regulations will, in general, suffice for a proper consideration of the acts charged as offenses against property under Count Two. But the following additional observations are also pertinent to an understanding of our application of the law to the facts established by the evidence.

Regarding terminology, the Hague Regulations do not specifically employ the term "spoliation", but we do not consider this matter to be one of any legal significance. As employed in the Indictment, the term is used interchangeably with the words "plunder" and "exploitation." It may therefore be properly considered that the term "spoliation", which has been admittedly adopted as a term of convenience by the Prosecution, applies to the wide-spread and systematized acts of dispossession and acquisition of property in violation of the rights of the owners which took place in territories under the belligerent occupation or control of Nazi Germany during World War II. We consider that "spoliation" is synonymous with the word "plunder" as employed in Control Council Law No. 10, and that it embraces offenses against property in violation of the laws and customs of war of the general type charged in the Indictment. In that sense we will adopt and employ the term spoliation in this opinion as descriptive of the offenses referred to.

It is a matter of history of which we may take judicial notice that the action of the Axis Powers, in carrying out looting and removal of property of all types from countries under their occupation, became so widespread and so varied in form and method, ranging from deliberate

plunder to its equivalent in cleverly disguised transactions having the appearance of legality, that the Allies, on 5 January 1943, found it necessary to join in a declaration denouncing such acts. The Inter-Allied Declaration was subscribed to by seventeen governments of the United Nations and the French National Committee. It expressed the determination of the signatory nations "to combat and defeat the plundering by the enemy powers of the territories which have been overrun or brought under enemy control." It pointed out that "systematic spoliation of occupied or controlled territory has followed immediately upon each fresh aggression." It recited that such spoliation:

".....has taken every sort of form, from open looting to the most cunningly camouflaged financial penetration, and it has extended to every sort of property — from works of art to stocks of commodities, from bullion and bank notes to stocks and shares in business and financial undertakings. But the object is always the same — to seize everything of value that can be put to the aggressors' profit and then to bring the whole economy of the subjugated countries under control so that they must enslave to enrich and strengthen their oppressors."

The signatory governments deemed it important, as stated in the Declaration, "to leave no doubt whatsoever of their resolution not to accept or tolerate the misdeeds of their enemies in the field of property, however these may be cloaked, just as they have recently emphasized their determination to exact retribution from war criminals for their outrages against persons in the occupied territories." The Declaration significantly concluded that the Nations making the declaration reserve all their rights:

".....to declare invalid any transfers of, or dealings with, property, rights and interests of any description, whatsoever which are, or have been, situated in the territories which have come under the occupation or control, direct or indirect, of the Governments with which they are at war, or, which belong or have belonged, to persons (including juridical persons) resident in such territories. This warning applies whether such transfers or dealings have taken the form of



open looting or plunder, or of transactions apparently legal in form, even when they purport to be voluntarily effected."

While the Inter-Allied Declaration does not constitute law and could not be given retroactive effect, even if it had attempted to include and express criminal sanctions for the acts referred to, it is illustrative of the view that offenses against property of the character described in the Declaration were considered by the signatory powers to constitute action in violation of existing international law.

In our view, the offenses against property defined in the Hague Regulations are broad in their phraseology and do not admit of any distinction between "plunder" in the restricted sense of acquisition of physical properties, which are the subject matter of the crime, and the plunder or spoliation resulting from acquisition of physical properties, which are the subject matter of the crime, and the plunder or spoliation resulting from acquisition of intangible property such as is involved in the acquisition of stock ownership, or of acquisition of ownership or control through any other means, even though apparently legal in form.

We deem it to be of the essence of the crime of plunder or spoliation that the owner be deprived of his property involuntarily and against his will. From the provisions of the Declaration which we have quoted, it becomes apparent that the invalidity or illegality of the transaction does not attach, even for purposes of rescission in a civil action, unless the transaction can be said to be involuntary in fact. It would be anomalous to attach criminal responsibility to an act of acquisition during belligerent occupancy when the transaction could not be set aside in an action for rescission and restitution.

It is the contention of the Prosecution, however, that the offenses of plunder and spoliation alleged in the Indictment have a double aspect. It is broadly asserted that the crime of spoliation is a "crime against the country concerned in that it disrupts the economy, alienates its

industry from its inherent purpose, makes it subservient to the interest of the occupying power, and interferes with the natural connection between the spoliated industry and the local economy. As far as this aspect is concerned, the consent of the owner or owners, or their representatives, even if genuine, does not affect the criminal character of the act." In its other aspect it is asserted that the crime of spoliation is an offense "against the rightful owner or owners by taking away their property without regard to their will, 'confiscation,' or by obtaining their 'consent' by threats or pressure."

We cannot deduce from Articles 46 through 55 of the Hague Regulations any principle of the breadth of application such as is embraced in the first asserted aspect of the crime of plunder and spoliation. Under the Hague Regulations, "Private property must be respected;" (Art. 46, Para 1) "Pillage is formally prohibited;" (Art. 47) and "Private property cannot be confiscated." (Art. 46, Para. 2) The right of requisition is limited to "the necessities of the army of occupation," must not be out of proportion to the resources of the country, and may not be of such nature as to involve the inhabitants in the obligation to take part in military operations against their country. But with respect to private property, these provisions relate to plunder, confiscation, and requisition which, in turn, imply action in relation to property committed against the will and without the consent of the owner. We look in vain for any provision in the Hague Regulations which would justify the broad assertion that private citizens of the nation of the military occupant may not enter into agreements respecting property in occupied territories when consent of the owner is, in fact, freely given. This becomes important to the evaluation of the evidence as applied to individual action under the concept that guilt is personal and individual. If, in fact, there is no coercion present in an agreement relating to the purchase of industrial enterprises or interests equivalent thereto, even during time of military occupancy, and if, in fact, the owner's consent is voluntarily given, we do not find such action to be violation of the Hague Regulations. The contrary in-

terpretation would make it difficult, if not impossible, for the occupying power in time of war to carry out other aspects of its obligations under international law, including restoration of order to the local economy in the interests of the local inhabitants. (Article 43, Hague Regulations). On the other hand, when action by the owner is not voluntary because his consent is obtained by threats, intimidation, pressure, or by exploiting the position and power of the military occupant under circumstances indicating that the owner is being induced to part with his property against his will, it is clearly a violation of the Hague Regulations. The mere presence of the military occupant is not the exclusive indication of the assertion of pressure. Certainly where the action of private individuals, including juristic persons, is involved, the evidence must go further and must establish that a transaction, otherwise apparently legal in form was not voluntarily entered into because of the employment of pressure. Furthermore, there must be a causal connection between the illegal means employed and the result brought about by employing such intimidation.

THE PRESIDENT: The Tribunal will rise until 1:30.

(A recess was taken until 1330 hours.)



(The Tribunal reconvened at 1330 hours, 29 July 1948).

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Judge Hebert will continue with the reading of the judgment.

JUDGE HERBERT: Under this view of the Hague Regulations, a crucial issue of fact to be determined in most of the alleged acts of spoliation charged in Count Two of the Indictment is the determination of whether owners of property in occupied territory were induced to part with their property permanently under circumstances in which it can be said that consent was not voluntary. Commercial transactions entered into by private individuals which might be entirely permissible and legal in time of peace or non-belligerent occupation may assume an entirely different aspect during belligerent occupation and should be closely scrutinized where acquisitions of property are involved, to determine whether or not the rights of property, protected by the Hague Regulations, have been adhered to. Application of these principles will become important in considering the responsibility of members of the Vorstand of Farben, who are sought to be charged under the Indictment, and who did not personally participate in the negotiations or other action leading to the alleged act of spoliation except by virtue of such Vorstand membership.

It can no longer be questioned that the criminal sanctions of international law are applicable to private individuals. The Judgment of Military Tribunal IV, United States vs Flick (Case No. 5) held:

"The question of the responsibility of individuals for such breaches of international law as constitute crimes has been widely discussed and is settled in part by the Judgment of IMT. It can not longer be successfully maintained that international law is concerned only with the actions of sovereign states and provides no punishment for individuals."

(Transcript page 10980).

We quote further:

"Acts adjudged criminal when done by an officer of the government are criminal also when done by a private individual. The guilt differs only in magnitude, not in quality. The offender in either case is charged with personal wrong and punishment falls on the offender in propria persona. The application of international law to individuals is no novelty." (Transcript page 10981).

Similar views were expressed in the case of the United States vs. Ohlendorf (Case No. 7), decided by Military Tribunal II. (See transcript of that Judgment, pages 6714-6716).

The IMT, in its Judgment, found it unnecessary to decide whether, as a matter of law, the doctrine of "subjugation" by military conquest has application to subjugation resulting from the crime of aggressive war. The doctrine was held to be inapplicable where there are armies in the field still seeking to restore the occupied country to its rightful owners. The Hague Regulations do not become inapplicable because the German Reich "annexed" or "incorporated" parts of the occupied territory into Germany, as there were, within the field attempting to restore the occupied countries to their true owners. We adopt this view. It will therefore become unnecessary, in considering the alleged acts of spoliation in Poland and Alsace-Lorraine, to consider this distinction which has been urged by the Defense.

To the foregoing observations interpreting the applicable law, added mention should be made of the basic principle that no individual defendant may be held guilty of the war crimes, or any aspect thereof, charged under Count Two, unless the competent proof establishes beyond reasonable doubt that he knowingly participated in an act of plunder or spoliation because he was either (a) a principal, or (b) an accessory to the commission of any such crime, or ordered, or abetted the same, or (c) took a consenting part therein, or (d) was connected

with plans or enterprises involving its commission, or (e) was a member of an organization or group connected with the commission of any such crime. (Article II, Paragraph 2, of Control Council Law No. 10).

One of the general defenses advanced is the contention that private industrialists cannot be held criminally responsible for economic measures which they carry out in occupied territories at the direction of, or with the approval of, their government. As a corollary to this line of argument it is asserted that the principles of international law in existence at the time of the commission of the acts here charged do not clearly define the limits of permissible action. It is further said that the Hague Regulations are outmoded by the concept of total warfare; that literal application of the laws and customs of war as codified in the Hague Regulations is no longer possible; that the necessities of economic warfare qualify and extinguish the old rules and must be held to justify the acts charged in keeping with the new concept of total warfare. These contentions are unsound. It is obvious that acceptance of these arguments would set at naught any rule of international law and would place it within the power of each nation to be the exclusive judge of the applicability of international law. It is beyond the authority of any nation to authorize its citizens to commit acts in contravention of international penal law. As custom is a source of international law, customs and practices may change and find such general acceptance in the community of civilized nations as to alter the substantive content of certain of its principles. But we are unable to find that there has been a change in the basic concept of respect for property rights during belligerent occupation of a character to give any legal protection to the widespread acts of plunder and spoliation committed by Nazi Germany during the course of World War II. It must be admitted that there exist many areas of grave uncertainty concerning the laws and customs of war, but these uncertainties have little application to



the basic principles relating to the law of belligerent occupation set forth in the Hague Regulations. Technical advancement in the weapons and tactics used in the actual waging of war may have made obsolete, in some respects, or may have rendered inapplicable, some of the provisions of the Hague Regulations having to do with the actual conduct of hostilities and what is considered legitimate warfare. But these uncertainties relate principally to military and naval operations proper and the manner in which they shall be conducted. We cannot read obliterating uncertainty into these provisions and phases of international law having to do with the conduct of the military occupant toward inhabitants of occupied territory in time of war, regardless of how difficult may be the legal questions of interpretation and application to particular facts. That grave uncertainties may exist as to the status of the law dealing with such problems as bombings and reprisals and the like, does not lead to the conclusion that provisions of the Hague Regulations, protecting rights of public and private property, may be ignored. As a leading authority on private property, may be ignored. As a leading authority on international law has put it:

"Moreover, it does not appear that the difficulties arising out of any uncertainty as to the existing law have a direct bearing upon violations of the rules of war which have provided the impetus for the almost universal insistence on the punishment of war crimes. Acts with regard to which prosecution of individuals for war crimes may appear improper owing to the disputed nature of the rules in question arise largely in connection with military, naval and air operations proper. No such reasonable degree of uncertainty exists as a rule in the matter of misdeeds committed in the course of military occupation of enemy territory. Here the unchallenged authority of a ruthless invader offers opportunities for crimes the heinousness of which is not attenuated by any possible appeal to military necessity, to the uncertainty of the law, or to the operation of reprisals." (Lauterpacht,

The Law of Nations and the Punishment of War Crimes, 1945 British Year Book of International Law).

We find sufficient definiteness and meaning in the provision of the Hague Regulations and find that the provisions which we have considered are applicable and operate as prohibitory law establishing the limits beyond which the military occupant may not go.

The General Facts:

The Judgment of the International Military Tribunal clearly established that the Reich adopted and pursued a general policy of plunder of occupied territories in contravention of the provisions of the Hague Regulations with respect to both public and private property. The IMT found that there was a systematic plunder of public and private property. It found that territories occupied by Germany "were exploited for the German war effort in the most ruthless way, without consideration of the local economy, and in consequence of a deliberate design and policy." Such action was held to be criminal under Article 6 (b) of the Charter which, as we have already indicated, corresponds to Article II (1b) of Control Council Law No. 10.

Concerning the methods employed, the IMT stated:

"The methods employed to exploit the resources of the occupied territories to the full varied from country to country. In some of the occupied countries in the East and the West, this exploitation was carried out within the framework of the existing economic structure. The local industries were put under German supervision, and the distribution of war materials was rigidly controlled. The industries thought to be of value to the German war effort were compelled to continue, and most of the rest were closed down altogether. Raw materials and the finished products alike were confiscated for the needs of the German industry. As early as 19 October 1939 the Defendant Goering had issued a directive giving detailed instructions for the

administration of the occupied territories...." (Trial of the Major War Criminals, Vol. 1, page 239).

The Goering order, which we find unnecessary to quote, was carried out, according to the IMT, so that the resources were requisitioned in a manner out of all proportion to the economic resources of the occupied countries, and resulted in famine, inflation, and an active black market. The IMT further point out:

"In many of the occupied countries of the East and the West, the autocracies maintained the pretense of paying for all the property which they seized. This elaborate pretense of payment merely disguised the fact that the goods sent to Germany from these occupied countries were paid for by the occupied countries themselves, either by the device of excessive occupation costs or by forced loans in return for a credit balance on a 'clearing account' which was an account merely in name." (Ibid. 240).

With reference to the charges in the present Indictment concerning Farben's activities in Poland, Norway, Alsace-Lorraine, and France, we find that the proof establishes beyond a reasonable doubt that offenses against property as defined in Control Council Law No. 10 were committed by Farben, and that these offenses were connected with, and an inextricable part of the German policy for occupied countries as above described. In some instances, following confiscation by Reich authorities, Farben proceeded to acquire permanent title to the properties thus confiscated. In other instances involving "negotiations" with private owners, Farben proceeded permanently to acquire substantial or controlling interests in property contrary to the wishes of the owners. These activities were concluded by entering territory that had been overrun and occupied by the Wehrmacht, or was under its effective control. The action of Farben and its representatives, under these circumstances, cannot be differentiated from acts of plunder or pillage committed by officers,



29 July - A-LU-15-7-Schwab  
Court VI - Case VI

soldiers, or public officials of the German Reich. In those property acquisitions which followed confiscation by the Reich, the course of action of Farben clearly indicates a studied design to acquire such property. In most instances the initiative was Farben's. In these instances in which Farben dealt directly with the private

owners, there was the over present threat of forceful seizure of the property by the Reich or other similar measures, such, for example, as withholding licenses, raw materials, the threat of uncertain drastic treatment in peace-treaty negotiations, or other effective means of bending the will of the owners. The power of the military occupant was the overpresent threat in these transactions, and was clearly an important, if not a decisive factor. The results enrichment of Farben and the building of its greater chemical empire through the medium occupancy at the expense of the former owners. Such action on the part of Farben constituted a violation of the Hague Regulations. It was in violation of rights of private property, protected by the Laws and Customs of War, and in the instance involving public property, the permanent acquisition was in violation of that provision of the Hague Regulations which limits the occupying power to a mere usufruct of real estate. The form of the transactions were varied and intricate, and were reflected in corporate agreements well calculated to create the illusion of legality. But the objective of pillage, plunder and spoliation stands out, and there can be no uncertainty as to the actual result.

As a general defense, it has been urged on behalf of Farben that its action in acquiring a controlling interest in the plants factories and other interests in occupied territories was designed to, and did, contribute to the maintenance of the economy of these territories, and thus assisted in maintaining one of the objective aims envisaged by the Hague Regulations. In this regard it is said that the action was in conformity with the obligation of the occupying power to restore an orderly economy in the occupied territory. We are unable to accept this defense. The facts indicate that the acquisitions were not primarily for the purpose of restoring or maintaining the local economy, but were rather to enrich Farben as part of a general plan to dominate the industries involved, all as part of Farben's

asserted "claim to leadership". If management had been taken over in a manner that indicated a mere temporary control or operation for the duration of the hostilities, there might be some merit to the defense. The evidence, however, shows that the interests which Farben proceeded to acquire, contrary to the wishes of the owners, were intended to be permanent. The evidence further establishes that the action of the owners was involuntary, and that the transfer was not necessary to the maintenance of the German army of occupation. As the action of Farben in proceedings to acquire permanently property interests in the manner generally outlined is in violation of the Hague Regulations, any individual who knowingly participated in any such act of plunder or spoliation with the degree of connection outlined in Article II, paragraph 2 of Central Law No. 10, is criminally responsible thereafter.

We will now proceed briefly to record our conclusions as to the major aspects of individual acts of spoliation as established by the proof.

A Spoliation of Public and Private Property in Poland:

We find that the proof establishes beyond reasonable doubt that acts of spoliation and plunder, constituting offenses against property as defined in Control Council Law No. 10, were committed through Farben with respect to three properties located in Poland.

On 7 September 1939, following the invasion of Poland, the Defendant was Schnitzler wired Director Krueger of Farben's Directorate in Berlin, requesting that the Reich Ministry of Economics be informed of the ownership status and other facts concerning four important Polish dyestuffs factories which, it was assumed, would fall into the hands of the Germans within a few days thereafter. The plant facilities involved were those of Przemysl Chemiczny Boruta, S.A. Zgierz (Boruta), Chemiczna Fabryka Wola Krystoporska (Wola) and Zaklady Chemiczne W Winnicy (Winnica).



Boruta was the property, of, and controlled by, the Polish state Wola was owned by a Jewish family by the name of Szpilogel; and Winnica was ostensibly owned by French interests, but in reality there was a secret fifty per cent ownership in I.G. Chemie of Basel. In actual effect, Farben controlled the latter half interests because of its relationship with the record owner and because it had option rights of purchase with I.G. Chemie. Farben's interests had been so clacked at the time of the establishment of Winnica because of Polish restrictions on German capital investments. Farben's half ownership meant it had a legitimate interests to protect but gave no color of right to the dismantling of parts of the Winnica installations.

These three plants, with a fourth plant, Pabjanica (owned by Swiss interests and not here involved, accounted for more than one half of the Polish dyestuff needs. Von Schnitzler pointed out that the Boruta and Wola were wholly owned by Polish interests and were members of the dyestuffs cartel. He called attention to the considerable and valuable stocks of preliminary, intermediate, and final products in the plants and stated: "Although not wanting to take a position on further operation, we consider it of primary importance that the above-mentioned stocks be used by experts in the interests of German national economy. Only I.G. is in a position to make experts available." A Farben representative was suggested as the appropriate person for the task.

Shortly thereafter, on 14 September 1939, von Schnitzler and Krueger addressed a letter to the Ministry of Economics confirming a conference of that same date. The letter proposed that Farben be named as trustee to administer Boruta, Wola and Winnica, to continue operating them, or to close them down, to utilize their supplies, intermediate and final products. Two Farben employees were recommended as executives for the undertaking. Von Schnitzler affirmatively

recommended that Wola be closed down permanently and that Boruta be declared to be of special value to the German war economy as most of the German dyestuffs plants were located in the Western Zone, so that Boruta had a double value." Replying to von Schnitzler's letter, the Reich Ministry of Economics advised that it had decided to comply with Farben's suggestion and would place Boruta, Wola and Winnica, located in former Polish territories, now occupied by German forces, under provisional management. The Reich Ministry of Economics was apparently under no illusions as to Farben's acquisitive desires in provoking the provisional administration. It agreed to name the Farben-recommended employees as provisional managers, but specified that such action created no priority rights for purchase in Farben. This exhibit indicates that the action of the Reich authorities in relation to these properties was directly instigated by Farben. Farben's nominees swung into action and took possession of the plants in early October of 1939. Von Schnitzler next proposed to the Reich authorities by letter on 10 November 1939 that Boruta, on the verge of bankruptcy and without funds for adequate plant equipment, should be leased for 20 years to a Farben subsidiary to be created for that purpose. Wola was to be closed down and its equipment brought to Boruta. Von Schnitzler referred to the necessity for "a certain permanency of conditions", and added that, "if it should be in the interests of the Reich to re-privatize the plant during the twenty-year term, Farben should be given priority rights as to purchase. This letter makes it plain that the purpose and interest of Farben from the outset was permanent acquisition and not temporary operation. Dismantling of certain Winnica equipment and its transfer to Boruta was also recommended. At the end of November 1939, von Schnitzler by letter, submitted Farben's proposals again to Goering, in his capacity as Plenipotentiary for the Four-Year Plan, requesting approval by the Main trustee Office East of the earlier Farben recommendations.

The recommended lease was not executed, and in June 1940 a decision was reached whereby Farben was allowed to purchase Boruta instead of executing a lease. Competition developed for the purchase of the property, and price negotiations were protracted. At the meeting of 4 December 1940, the Farben representatives, who were acting pursuant to von Schnitzler's directions, made it plain that the plant should be acquired by Farben in the interests of the German dyes producers, that the plant must continue operation, and that it must "because of the leadership claim recognized by all official agencies . . . be integrated into the sphere of I.G. dyestuffs production", an objective which could be achieved only through purchase. In April 1941, von Schnitzler was advised that the Reichsfuehrer SS had decided to allocate Boruta to Farben. The sales contract, signed by von Schnitzler was finally concluded on 27 November 1941, with Farben acquiring the land, buildings, machinery, equipment, tools, furniture, and fixtures. It is significant that the sale was made operative as of 1 October 1939, the approximate date of the original seizure and operation by the Farben nominees.

The acquisition of the French interests, consisting of 1,006 shares of the stock of Winnica, was arrived at by agreement with the French coincident with the Francolor negotiations, to which reference will be later made. But we cannot find that the French interests were deprived of their ownership against their will and consent on the basis of the meager evidence before us concerning the Winnica stock transfer to Farben. The evidence on the basis of which the transfer of shares was declared invalid by the French Court has not been introduced. It would be mere surmise on our part to conclude that the French did not agree to the Farben acquisition, particularly in view of the fact that Farben was already, in practical effect, half owner of the total shares of Winnica.



However, the evidence does establish that, on the recommendation of Farben, equipment from both Wola and Winnica was dismantled and shipped to Farben plants in Germany, which constitutes participation in spoliative activities in Poland.

The foregoing findings make it clear that the permanent acquisition by Farben of productive facilities or interests therein, and the dismantling of plant equipment, was exploitation of territories under belligerent occupation in violation of the Hague Regulations.

B The Charge of Spoliation with Reference to Norway:

We find that offenses against property within the meaning of Control Council Law No. 10 were committed in the acquisition by Farben of property interests in occupied Norway intended to be permanent and against the will and without the free consent of the owners. This findings relates to the Nordisk-Lettmetall project for expansion of the production of light metals in Norway, as a part of which the French shareholders were deprived of their majority stock interests in that company in favor of a German group, including Farben. The initiative in the Nordisk-Lettmetall project was in the Reich authorities, but it is clearly established that Farben joined in the project and that its representatives knew that the power of the Nazi Government then occupying Norway was the dominant consideration forcing the French owners of Norsk-Hydro into the project.

The facts, briefly, are these: Following the aggression against and military occupation of Norway, Hitler decided that the Norwegian aluminum capacity should be reserved for the requirements of the Luftwaffe. Goering issued appropriate orders, pursuant to which special powers were entrusted to Dr. Koppenberg, in his capacity as trustee for aluminum, was given the task of expanding production of light metals in Norway. The plan was an ambitious one, calling for plant expansions and capital investments on a grandiose scale so as

eventually to treble the Norwegian production of light metals. Norsk-Hydro Elektrisk Kvaeststoffaktieselskabet (referred to simply as Norsk-Hydro) was one of Norway's most important in the chemical and related industrial concerns operating in the chemical and related fields. Its facilities were required for the project, and certain of its plants were to be expanded and properties transferred to accomplish the German objectives. It is plain from the evidence that the immediate German objective was to harness the resources of Norway, including its water power and raw materials, to the over-increasing demands of the German war machine, particularly for military aircraft. The decision to carry out this project was made at the highest governmental levels, and the entire power of the military occupant was clearly available to carry it out, as the properties of Norsk-Hydro were located in territory under military occupation.

Farben immediately entered into this large-scale planning and fought for as large as capital participation as possible. It may have accepted the Reich nominees as partners reluctantly, but its consenting participation in the project cannot be doubted.

In addition to the immediate purpose of obtaining light metals for the Luftwaffe, Farben's long-term objective was the establishment of permanent German domination of the light metals industry of Norway looking to the time when peace would be achieved through Nazi victory.

The controlling stock interests in the Norsk-Hydro, amounting to approximately 64% of the capitalization, was owned by a

group of French shareholders represented by the Banque de Paris et des Pays Bas (referred to as Banque de Paris). The plan finally evolved by the Reich Air Ministry, after numerous conferences in which Farben representatives participated, resulted in creation of a new corporation, Nordisk Lettmetall, with one-third interest in the Reich Government and its designated agencies, one-third interest in Farben, and one-third interest in Norsk-Hydro. The French owners of Norsk-Hydro did not voluntarily enter the Nordisk-Lettmetall project, but its plant facilities were located in occupied Norway, and the evidence, although conflicting on this point, convinces us that pressure from the Nazi Government and fear of compulsory measures affecting its Norwegian holdings were the dominating considerations. In this manner Norsk-Hydro was forced to join in the project, and its properties were heavily damaged in subsequent allied bombings. Norsk-Hydro sustained severe financial losses as a result of the entire project. After joining in the project, Farben was a major participant in its execution. Nordisk-Lettmetall used Norsk-Hydro's facilities in the project, and some of its valuable properties were utilized for plant expansions.

As a part of the overall plan, the evidence establishes that the Reich authorities deliberately planned to execute the project in such a manner as to deprive Norsk-Hydro's French shareholders of their majority interest in that company. Farben joined too in this aspect of the plan. In order to carry out the wishes of the Nazi Government that Norsk-Hydro participate in the Nordisk-Lettmetall project, it became necessary to increase the capitalization of Norsk-Hydro by 50,000 Norwegian Kroners. The French shareholders were not represented at the meeting of 30 June 1941, at which the increase in the capital stock was voted and participation in Nordisk-Lettmetall was voted. They were not authorized by the occupying powers to attend. In carrying out the increase in capitalization pursuant to the decision



reached at the meeting, the Banque de Paris had no means of effectively protecting the pre-emptive rights of the French shareholders, because licenses for the clearing of the foreign exchange necessary for participation in the increased capital stock could not be obtained from the Nazi Government, France then being under military occupation. Under the compulsion of these circumstances the representatives of the French majority of Norsk-Hydro were forced to permit purchase of the pre-emptive rights in the new Norsk-Hydro stock by the German interests, including Farben and the other nominees of the Reich. In this manner the French majority was converted into a minority interest. We have carefully weighed the conflicting evidence and the defenses of fact urged with respect to this matter. It is our conclusion that the French shareholders were deprived of their majority interest in Norsk-Hydro under compulsion resulting from the ever-present threat of seizure of the physical properties of Norsk-Hydro in occupied Norway and that their participation in Nordisk-Iettmetall was not voluntary. The action was in violation of the Hague Regulations, and those who knowingly became parties to the entire transaction must be held guilty under Count Two.

C. Plunder and Spoliation in France:

(1) Alsace-Lorraine. Paragraph 111 of the Indictment recites: "The German Government annexed Alsace-Lorraine, and confiscated the plants located there which belonged to French nationals. Among the plants located in this area were the dyestuffs plant of Kuhlmann's Societe des Matieres Colorantes et Produits Chimiques de Mulhouse, the oxygen plants, the Oxygene Liquide Strassbourg-Schiltigheim (Alsace), and the factory of the Oxhydrique Francaise in Diedenhofen (Lorraine). Farben acquired these plants from the German Government without payment to or consent of the French owners."

Farben's action in occupied Alsace-Lorraine followed the pattern developed in Poland. The Mulhausen plant of the Societe des

Produits Chimiques et Matieres Colorantes de Mulhouse, located in Alsace, was leased by the German Chief of Civil Administration to Farben on 8 May 1941. The plant had been taken possession of pursuant to the general authorization by the Reich for the confiscation of French property. Farben went into possession even prior to the execution of a lease in its favor for the purpose of starting production again. It is clear from the terms of the lease agreement that temporary operation in the interest of the local economy was not contemplated, and that the lease was purely transitional to permanent acquisition by Farben. It contained express provisions obligating the lesser, the Chief of the Civil Administration in Alsace, representing the Nazi Government, to sell the plant and its facilities to Farben as soon as the general regulations and official decrees allowed it. Pursuant to this clause a formal governmental decree of seizure and confiscation, transferring the property to the German Reich, was entered on 23 June 1943. This was followed by the sale on 14 July 1943 to Farben. It is unnecessary to comment upon the flagrant disregard of property rights established by these facts. The violation of the Hague Regulations is clear and Farben's participation therein amply proven.

In the case of the oxygen and acetylene plants, referred to as Strassbourg-Schiltigheim, similar action was taken by Farben. After first taking a lease, Farben proceeded to, and did, acquire permanent title to the plants following the governmental confiscation which was without any legal justification under international law. In none of these transactions were the rights of the owners considered.

In the case of the Diedenhofen plant, located in Lorraine, the plant was leased to Farben but permanent title was never acquired. Farben urged its claims to purchase upon the occupying authorities, but the German Chief of Civil Administration refused to incorporate a provision for purchase in the lease agreement. For some reason not clear from the evidence, Farben met with difficulty here. The evidence

indicates that the plant had been evacuated prior to the Farben operation. This fact, coupled with the attitude of the German authorities and the short term of the lease, leads us to the conclusion that, despite the intention to acquire permanently that was manifested by Farben, the proof does not adequately establish that the owner was deprived of the property permanently, or that its use was withheld contrary to the owner's wishes. We find the evidence insufficient upon which to predicate any criminal guilt with reference to the Dierdenhofen plant.

(2) The Francolor Agreement. Paragraphs 103 through 110 of the Indictment charge the defendants with the plunder and spoliation of the principal dyestuffs industries of France by means of the so-called Francolor Agreement. The proof fully sustains the charges outlined in this portion of the Indictment. In utter disregard of the rights of the French, Farben, acting principally through the Defendants von Schnitzler, ter Meer, and Kugler, proceeded with methods of intimidation and coercion to acquire permanently for Farben a majority interest in a new corporation, "Francolor", which was organized to take over the assets of the French concerns. The facts may be briefly summarized as follows: Three of the major dyestuffs firms of France, prior to the war, were Compagnie Nationale de Matieres Colorantes et Manufactures de Produits Chimiques du Nord Reunies Etablissements Kuhlmann, Paris (referred to hereinafter as Kuhlmann); Societe Anonyme des Matieres Colorantes et Produits Chimiques de Saint Denis, Paris (referred to as Saint Denis); and Compagnie Francaise de Produits Chimiques et Matieres Colorantes de Saint-Clair-du-Rhone, Paris (referred to as Saint-Clair-du-Rhone). These three firms had cartel agreements with Farben, including the so-called Franco-German cartel agreement, entered into in 1927; the so-called "Tri-Partite Agreement", or the Franco-German-Swiss Cartel, concluded in 1929; and the so-called Four-Party Agreement, to which German, French, Swiss, and English groups were parties, entered into in 1932.



Under these agreements a basis of cooperation between the more important producers of dyestuffs on the European continent had been laid. But in planning for the New Order of the industry, Farben had contemplated and recommended complete reorganization of the industry under its leadership.

Immediately after the French armistice in 1940, Farben conferred with representatives of the occupying authorities and other governmental agencies and deliberately delayed negotiations with the French to make them more receptive to negotiations. In the meantime, Farben's influence with the German occupation authorities was used to prevent the issuance of licenses and to stop the flow of raw materials which would have permitted the French factories to resume their normal pre-war production in keeping with the needs of the French economy. When the French plants were unable to resume production and their plight became sufficiently acute, they were forced to request the opening of negotiations. Farben indicated its willingness to confer. A conference was held on 21 November 1940 in Wiesbaden, at which representatives of Farben, the French industry, and the French and German Governments were in attendance. The meeting was under the official auspices of the Armistice Commission. Patently the French knew that they were forced to ascertain in the so-called negotiations what the future fate of the French dyestuffs industry, then at the mercy of the occupying Germans, might be. The meeting of 21 November 1940 was held in this atmosphere. The Defendants von Schmitzler, ter Meer, and Kugler were in attendance as principal representatives of Farben. At the outset of the conference the French industrialists were frankly informed that the pre-war agreements between Farben and the French producers, which the French wished to use as a basis in the negotiations, must be considered as abrogated owing to the course of the war. Farben's historical claim to leadership, founded upon alleged wrongs traced back to World War I, was asserted as additional reason. In a

most high-handed fashion the German representatives informed the French that the course of events during the preceding year had put matters in an entirely different light, and that there must be an adjustment to the new conditions. A memorandum read by von Schnitzler was presented to the French representatives, in which Farben demanded a controlling interest in the French dyestuffs industry. The German demands, set forth in the Farben memorandum, were vigorously supported by Ambassador Haxsen, who pointed out the grave danger to the French dyestuffs industry if its future should be relegated to settlement by the peace treaty rather than through the medium of the "negotiations". It is clear that this conference was in no real sense the opening of negotiations between parties free to deal with each other without compulsion. It was rather the perfect setting for the issuance of the German ultimatum to the French dyestuffs industry, which was to be subjected to Farben's dyestuffs, which was to be subjected to Farben's control.

The French industry was faced with an unenviable alternative: It could pursue the path of collaboration and surrender, recognizing the plight created by the situation in the light of Farben's demands, or, if it chose to resist, it entailed the risk of perhaps more severe treatment at the hands of the occupying authorities or of future governmental commissions appointed for handling the matter in connection with the negotiation of a treaty of peace. The French feared the exercise of the power of German occupation either to take

over the plants completely or to dismantle and cart them away to Germany, in keeping with the pattern that had been established for military occupation by policies of the Third Reich. Notwithstanding these dread alternatives, the French were outspoken and vigorous in their resistance to the German demands. They were, however, astute enough not to break off negotiations completely.

On the following day, 22 November 1940, a second conference was held between representatives of Farben -- including von Schnitzler, ter Meer, Waibel and Kugler -- and representatives of the French group, with no government officials in attendance. Farben's demands for majority participation and absorption of the French dyestuffs industry were forcefully made at this conference. The French continued their protests. They refused to accept the proposals, but still without breaking off negotiations. In view of the situation, they stated that they would report the matter to the French Government for counsel and advice. They were advised by their government not to break off negotiations because such a step might have serious repercussions. Postponement and delay in the negotiations was in complete harmony with Farben's plan to force the French group into submission. Subsequently a French counter-proposal was presented to Farben representatives on 20 January 1941 at a meeting in Paris. This proposal represented the limits beyond which the French hoped not to be compelled to go. It was proposed that there be created a sales combine with a minority interest in Farben, the French holding the majority of the shares. This proposal was rejected by Farben. It did not satisfy the claim to leadership. It became increasingly clear, as the negotiations progressed, that this was a matter which would be settled entirely on Farben's terms. Farben's demand was for outright control of the French dyestuffs industry by 51% participation in the stock of a new corporation, Francolor, which was to be formed to take over all of the assets of Kuhlmann, Saint-Clair, and Saint-Denis. Reluctantly the French accepted in principle the German demand for a con-



solidation of French dyestuffs production in a new company with German participation, but they still protested against, and held out against, Farben's demand for the majority interest. The evidence establishes that in this regard they even received support from French governmental authorities. But the French industry's plight was too desperate.

Finally, on 10 March 1941, the Vichy Government gave its approval to the plan for the creation of the Franco-German Dyestuffs Company, Francolor, in which Farben was to be permitted to acquire 51 1/2 stock interest. This decision of the Vichy Government was announced by the Defendant von Schnitzler to the French representatives at a conference on that date. After confirmation of the fact that the officials in charge of economic questions for the French Government supported the position taken by Farben, the French industry was forced to give in. Final agreement was reached at a subsequent conference on 12 March 1941, attended by representatives from the French and German industries involved and by representatives of Military Government in occupied France.

The Francolor Convention was formally executed on 18 November 1941. It was signed by the Defendants von Schnitzler and ter Meer on behalf of Farben. By this convention Farben permanently acquired the controlling interest in the French dyestuffs industry, and paid therefor in shares of I.G.'s stock, which could not be realized upon by the French as they were prohibited by terms of the convention from transferring the shares except among themselves. A decree entered by a French Court on 3 November 1945 declared the legal nullity of the transfer of the shares of stock in Francolor to Farben. The transaction, although apparently legal in form, was annulled by virtue of the Inter-Alled Declaration of 5 January 1943 and French decrees based thereon.

The defendants have contended that the Francolor Agreement was the product of free negotiations and that it proved beneficial in practice to the French interests. We have already indicated that overwhelming proof establishes the pressure and coercion employed to obtain the consent of the

French to the Francolor agreement. As consent was not freely given, it is of no legal significance that the agreement may have contained obligations on the part of Farben, the performance of which may have assisted in the rehabilitation of the French industries. Nor is the adequacy of consideration furnished for the French properties in the new corporation a valid defense. The essence of the offense is the use of the power resulting from the military occupation of France as the means of acquiring private property in utter disregard of the rights and wishes of the owner. We find the element of compulsion and coercion present in an aggravated degree in the Francolor transaction, and the violation of the Hague Regulations is clearly established.

Judge Morris will continue with the reading of the judgment.

JUDGE MORRIS:

(3) Rhone-Poulenc. There are two aspects of the charges of spoliation in the matter of Rhone-Poulenc. Prior to the war this firm was an important French producer of pharmaceuticals and related products. The first aspect relates to a licensing agreement entered into between Farben and Societe des Usines Chimiques Rhone-Poulenc, Paris (referred to as Rhone-Poulenc), and the second aspect relates to the so-called Theraplix Agreement. Under the first agreement substantial sums of money were paid to Farben during the war years on products covered by the licensing agreement and manufactured by the French firm. Under the second agreement Farben eventually acquired a majority interest in a joint sales company operated in the joint interest of I.G. Bayer and Rhone-Poulenc. It is the contention of the Prosecution that both agreements constitute spoliation in that they were entered into unwillingly by the French as a result of pressure applied by Farben during the military occupation of France and as part of Farben's plan to subject the French pharmaceutical industry to its claim to leadership.

The main physical properties involved in the Rhone-Poulenc transactions were situated in the unoccupied zone of France. We need not concern

ourselves with the strict nature of these agreements with reference to the acquisition of an interest in physical property. The agreements, in any event, involved the proceeds arising from the production of physical plants located in unoccupied territory. Thus the productive facilities so located were the source of the valuable interests involved in the contracts.

The location of the physical property and plants are of decisive importance in determining whether a case of spoliation might arise from the transactions involved. It is clear that the location of these properties was not in territory under the occupation or immediate control of the Wehrmacht. Farben was not in a position to enlist the Wehrmacht in seizure of the plants, or to assert pressure upon the French under threat of seizure or confiscation by the military. This is disclosed by a report of discussions held in Weisbaden between the Defendant Mann as representative of Farben and officials of the Reich, wherein it is said: "Considerable difficulties will certainly arise from the fact that Rhone Poulenc is situated in the unoccupied zone, as our chances of gaining control there are very slight. For this reason, Dr. Kolb suggests that we should endeavor to acquire direct influence both in the occupied and unoccupied zones by the exercise of control over the allocations of raw materials." Thus it appears that the pressure sought to be exercised in inducing the French to enter into the agreements involved in these transactions could not have been carried out by military seizure of physical properties. The pressure consisted of a possible threat to strangle the enterprise by exercising control over necessary raw materials. It further appears that Farben asserted a claim for indemnity for alleged infringements of Farben's patents, well knowing that the products were not protected under the French patent law at the time of the infringement. This conduct of Farben's seems to have been wholly unconnected with seizure or threats of seizure, expressed or implied, and while it may be subject to condemnation from a moral point of view, it falls far short of being proof of plunder either in its ordinary concept or as set forth in the Hague Regulations, either directly or by implication.



3. Russia:

There can be no doubt that the occupied territories of Russia were systematically plundered in consequence of the deliberate design and policy of the Nazi Government. Farben made far-reaching plans to participate in this plunder and spoliation, but the plans laid by Farben did not reach the stage of completion, and we are unable to say from the record before us that any individual defendant has been sufficiently connected with completed acts of plunder in Russia within the meaning of the Control Council Law. Farben, acting through the Defendant Ambros, did select and appoint experts to go to Russia to operate the Buna rubber plants expected to fall into German hands and urged its priority rights to exploit the Russian processes in the Reich, but these plans did not materialize in any completed acts of spoliation established by the proof. The proof leaves no doubt that Farben did not desire to be left out of the exploitation in the East. With this in mind it participated in plans for the organization of the so-called Eastern corporations which were to have an important part in reprivatizing Russian industry. Some of these companies came into existence, but the evidence of their activities is not sufficient to support any finding of guilt in connection therewith. Farben expected to acquire properties in Russia, but it is not shown there was ever any such acquisition.

Special stress is placed by the Prosecution on the activities of the Continental Oil Company, which was founded prior to the invasion of Russia and in which Farben held a small stock interest. We are not satisfied that Farben ever directed or influenced the activities of the Continental Oil Company in any effective manner and cannot conclude that the mere membership of Krauch and Buetefisch on the Aufsichtsrat, which was not the managing board, in the absence of a more complete proof of direct and active participation in the spoliative activities carried out by Continental Oil Company for a finding of guilt under Control Council Law No. 10.

**Individual Responsibility:**

We will now turn to the consideration of the individual responsibility of the defendants for the acts of spoliation which we have described in the above findings. It is appropriate here to mention that the corporate defendant, Farben, is not before the bar of this Tribunal and cannot be subjected to criminal penalties in these proceedings. We have used the term Farben as descriptive of the instrumentality of cohesion in the name of which the enumerated acts of spoliation were committed. But corporations act through individuals and, under the conception of personal individual guilt to which previous reference has been made, the Prosecution, to discharge the burden imposed upon it in this case, must establish by competent proof beyond a reasonable doubt that an individual defendant was either a participant in the illegal act or that, being aware thereof, he authorized or approved it. Responsibility does not automatically attach to an act proved to be criminal merely by virtue of a defendant's membership in the Vorstand. Conversely, one may not utilize the corporate structure to achieve an immunity from criminal responsibility for illegal acts which he directs, counsels, aids, orders, or abets. But the evidence must establish action of the character we have indicated, with knowledge of the essential elements of the crime. In some instances individuals performing these acts are not before this Tribunal. In other instances, the record has large gaps as to where and when the policy was set. In some instances a policy is set without clear indication that essential factual elements required to make it criminal were disclosed. Difficulties of establishing such proof due to the destruction of records or other causes does not relieve the Prosecution of its burden in this respect.

One cannot condone the activities of Farben in the field of spoliation. If not actually marching with the Wehrmacht, Farben at least was not far behind. But translating the criminal responsibility

to personal and individual criminal acts is another matter. With these preliminary observations our findings as to individual defendants are as follows:

Krauch:

The evidence does not establish that Krauch was criminally connected with Farben's spoliative acts in Poland. Owing to his position with the government he was not active in the administrative affairs of Farben after 1936, and he became further removed from the routine management with his appointment to the chairmanship of the Aufsichtsrat in 1940. There is no showing that he had any part in the establishment of the policy pursuant to which Farben acquired the properties in Poland.



With reference to the alleged removal of machine installations from the Simon Pit in Lorraine, it appears that Krauch wrote a letter to the Military Economy and Armament Office requesting release of machine installations of the Simon Pit in Lorraine to be transferred to Gersthofen. The purpose of the recommendation was to expand electric power needed for the aluminum program, for which Krauch was responsible. This recommendation received Keitel's approval after consideration of the question of whether there was any violation of international law involved. Keitel's decision was communicated to Krauch in favor of the recommendation, and a subordinate of Krauch's was placed in charge of the work. But the evidence does not establish that the dismantling was actually carried out. Under these circumstances, Krauch must be found Not Guilty likewise on this aspect of Count Two.

In the case of spoliation in Norway it appears that Krauch acted as a technical advisor after the plans for expansion of light-metals production in Norway were under way. Prior to the initiation of the project he had a conference with the Defendant Buerger, in which he merely requested that Parben indicate the extent of its desired participation in the project. It does not appear that he took a prominent part in the negotiations, with reference either to the establishment of Nordisk-Lettmetall or the increase in the capital stock of Norsk-Hydro. His connection with the Norway project, in the capacity of a technical expert and adviser to Koppenberg on the type of installations to be established, does not, in our opinion, constitute sufficient participation in the exploitation of the resources of Norway to warrant a finding of guilt.

The evidence is also insufficient to convict Krauch insofar as alleged spoliation in Russia is concerned. It does not appear that any plans to which he may have been a party were carried out at all, nor that he was active in the plunder and spoliation of eastern occupied territory. His

activity in connection with the Continental Oil Company is not shown in detail. It must have been on a limited basis, as he was only a member of the Aufsichtsrat, appointed to represent Farben's relatively small capital investment in that company. Under German law, membership on the Aufsichtsrat, appointed to represent Farben's relatively small capital investment in that company. Under German law, membership on the Aufsichtsrat does not carry with it responsibility for the actual management of the affairs of the corporation.

We find also that the evidence establishes no connection between the charges of spoliation in France and the defendant Krauch. Krauch is acquitted of all charges under Count Two of the Indictment.

Schmitz:

The defendant Schmitz was chairman of the Vorstand, was *primus inter pares* of its members, and was the chief financial officer of Farben. His position necessitated that he be consulted on major matters of Farben policy in the interim between meetings of the Vorstand. It is certain that his responsibilities and his opportunities for knowledge went far beyond those of an ordinary Vorstand member. Notwithstanding the position which he held, however, the evidence does not conclusively connect him by any individual personal action on his part with the acts of spoliation in Poland, Alsace-Lorraine, or Russia. It is true that he presided at meetings of the Vorstand and frequently attended other Farben meetings, including those of the Commercial Committee, at which discussions were held, reports were made, action was planned and approved. But examination of the minutes and reports of the meetings fails to disclose anything incriminating as against Schmitz with regard to the mentioned transactions. The evidence, in general, is similar to that relied upon with reference to the other members of the Vorstand. In this respect the evidence is equally consistent with inferences that the acquisitions might have been effected in a legal manner. We are not convinced beyond reasonable doubt of the

guilt of the defendant Schmitz in connection with Farben's spoliative activities in Poland or Alsace-Lorraine.

In the matter of the Francolor acquisition the evidence has been presented on a different basis. Schmitz received minutes of the Wiesbaden meetings, and the evidence further establishes that he was continuously advised of the course of negotiations throughout the various conferences. The information coming to his attention in this manner was sufficient to apprise him of the pressure tactics being employed to force the French to consent to Farben's majority participation in the French dyestuffs industry. He was in a position to influence policy and effectively to alter the course of events. We, therefore, find that Schmitz bore a responsibility for, and knew of, Farben's program to take part in the spoliation of the French dyestuffs industry and, with this knowledge, expressly and impliedly authorized and approved it. Schmitz must be held Guilty on this respect of Count Two of the Indictment.

In the case of spoliation in Norway, the evidence establishes that Schmitz, in his capacity as Chairman of the Vorstand, had special knowledge of the entire project. He received a letter from the defendant Buerger recommending Farben's participation in the project, and such participation was later actually carried out. This could not have been done without his knowledge and approval. Possessing special knowledge of the project, he attended the meeting of the Vorstand on 5 February 1941, at which participation in the Nordisk-Lettmetall project was approved in principle. Reports of conferences with Reich authorities were made to the Schmitz. He participated in at least one of these conferences at which there was discussion regarding the steps to be taken in the acquisition of the Norsk-Hydro shares by the German group. He served as a member of the Styre, or governing board, of Norsk-Hydro, both prior to and subsequent to the increase in capitalization. We conclude that Schmitz was fully informed of the ramifications of the Nordisk-Lettmetall plan, and that his action is expressly or impliedly approving Farben's participation connects him criminally within the meaning of Control Council Law No. 10.



Schmitz is found Guilty under Count Two of the Indictment.

Von Schnitzler:

Von Schnitzler bears a major responsibility for Farben's spoliative activities in Poland and in France. He was the leading figure responsible for the formulation of Farben's general policy designed to achieve domination of the dyestuffs and chemical industries of Europe. He took the initiative in developing plans for the acquisition of the Polish property. Only six days after the invasion of Poland he recommended that the Reich authorities be approached concerning Farben's operation of Polish dyestuffs factories expected soon to fall into German hands. He urged the appointment of Farben, or Farben nominees, as trustees for the Polish factories. He conducted or supervised all negotiations transitional to the final acquisition of Boruta, including transmitting personally the proposals for a long term lease in favor of a Farben subsidiary to be created for this purpose. He personally signed the contract for the permanent acquisition of Boruta. He recommended that the Wola plant be closed down permanently, and recommended transferring equipment from both Wola and Winnica to Farben plants in Germany. In all these matters he aggressively incited the government to action. These facts are sufficient to demonstrate his guilt in regard to the Polish acquisitions.

The evidence does not establish von Schnitzler's criminal complicity in the acquisition by Farben of properties in Norway, nor is it sufficient to warrant conviction in connection with the charges of spoliation in Alsace-Lorraine.

In the Francolor acquisition von Schnitzler also played the leading role. He was Farben's chief representative at the meeting with representatives of the French and German Governments and representatives of the French dyestuffs industry. At these meetings methods of intimidation were used as part of a plan to force the French to meet Farben's demands. Von Schnitzler was fully aware of the fact that competent governmental authorities in occupied France had been requested to withhold raw material from the French

dyestuffs factories, to prevent shipment of goods into the unoccupied zone, and to make things generally difficult for the French in order that they would be willing to negotiate. Von Schnitzler was a party to the plan to delay the opening of negotiations with the purpose of making the plight of the French more desperate in order that they would be receptive to Farben's demands. When negotiations were finally opened at Wiesbaden he was fully aware of the atmosphere of intimidation created by holding the meeting under the auspices of the Armistice Commission. Thus, von Schnitzler and Kugler, in a letter to Farben representative Kramer, in Paris, said:

"It is quite obvious that our tactical position towards the French is by far stronger if the first fundamental discussion takes place in Germany and, more particularly at the site of the Armistice Delegation; and if our program, as outlined, will be presented, so to say, from official quarters."

He personally served the ultimatum containing Farben's demands, described by the French as a "dictate", on the representatives of the French dyestuffs industry. He subsequently supervised and was apprised of the conference and negotiations conducted by subordinate Farben employees. He personally signed the Francolor Convention, whereby the French dyestuffs industry, in opposition to its wishes, was forced to cede a 51% interest in the French industry to Farben. It is clear from this recital of the evidence that von Schnitzler was a party to the illegal acquisition by Farben of permanent property protected by provisions of the Hague Regulations. Von Schnitzler is found Guilty under Count Two of the Indictment.

Gajewski.

The defendant Gajewski was not personally active in any of the specific acts of spoliation charged in the Indictment. The Prosecution's case against him under this Count, therefore, depends entirely upon Gajewski's alleged participation in Farben's plunder and spoliation activities predicated upon his regular presence at meetings of the Vorstand, TEA, or other committee groups at which the various acquisitions in occupied countries came up for discussion, planning, information, or approval. It is contended that he knew of an approved such acquisitions constituting

spoliative transactions. As we have heretofore indicated, a defendant can be held guilty only if the evidence clearly establishes some positive conduct on his part which constitutes ordering, approving, authorizing, or joining in the execution of a policy or act which is criminal in character. It is essential, in keeping with the concept of personal and individual criminal responsibility, that, when seeking to attach criminality to acts not personally carried out, the action of a corporate officer in authorizing illegal action be done with adequate knowledge of those essential elements of the authorized act which give it its criminal character. With regard to transactions apparently legal in form, this means positive knowledge that the owner is being deprived of his property against his will during military occupancy.



We have carefully examined the minutes of the Vorstand and other Farben groups relied upon by the Prosecution to establish Gajewski's criminal complicity in the crimes charged under Count Two, and we cannot find that his action in approving these transactions constitutes sufficient conduct to warrant a finding of Guilty. The minutes of the Farben groups to which reference has been made are abbreviated in form and, in most instances, merely indicate that a report was made by the responsible Farben official charged with the execution of the project. The extent of the report is not shown. The reports made and distributed and the minutes reflecting discussion and action do not contain sufficient evidence from which it may be conclusively inferred that illegal methods would be used in the negotiations. Nor does it appear from the reports that the transactions were to be concluded without the full consent of the owners. With reference to acquisitions in Poland and Alsace-Lorraine which are connected with unlawful confiscations, the evidence of required knowledge of the facts is not found in the record. One may, in reviewing all this evidence, strongly suspect that much more of the details of the negotiations were actually reported and may have fully apprised Vorstand members that property was being illegally acquired in occupied territories, but suspicion alone does not amount to the requisite proof, as the minutes themselves would be equally consistent with action that would not import criminality. We cannot conclude that Gajewski's conduct in expressly or impliedly approving action reported at Vorstand or other meetings where the property acquisitions here considered were reported upon establishes his guilt under Count Two beyond a reasonable doubt.

It does not appear from the evidence that Gajewski's activity in the Kodak-Pathe matter resulted in any completed act of spoliation. His action here may have been laying the foundation for such an act, but it was not consummated.

He is acquitted of the charges under this Count, as we do not consider that it is proved that he took a part in any criminal action charged in Count Two.

Hoerlein:

There is no substantial evidence connecting the Defendant Hoerlein with any of the acts of spoliation charged in the Indictment, other than his activity as a member of the Vorstand and the Technical Committee. In this respect what we have said in general terms in our consideration of the evidence relied upon in the case of the Defendant Gajewski is applicable to this defendant. His principal connection under the evidence was in the Rhone-Poulenc transaction, in which it does appear that he had a degree of participation and knowledge which went beyond that of an ordinary Vorstand member. Under the view which we have expressed in our general findings of the facts, the Rhone-Poulenc transaction is not considered by the Tribunal as involving a war crime within its jurisdiction, regardless of how much the transaction might be condemned based on other considerations. We cannot impute criminal guilt to the Defendant Hoerlein from his membership in the Vorstand, and he is acquitted of all of the charges under Count Two of the Indictment.

Von Knieriem:

Von Knieriem was not only a member of Farben's Vorstand, he was also the first lawyer in Farben. But the evidence does not establish that he ever acted on any of the matters charged as spoliation in Count Two. Nowhere does it appear that he was consulted for legal advice in connection with these transactions or that he counselled or aided in their consummation. The one instance of evidence establishing that von Knieriem considered legal problems in occupied territories dealt with corporate problems of an entirely different character from the immediate

acquisitions of property with which we are here concerned under the evidence. It is not established that von Knieriem knew of the methods being pursued by Farben in acquiring property again- at the will and consent of the owners in occupied territories, or that he was in any way a party to the acquisitions in Poland and Alsace-Lorraine. His action in a legal capacity in the establishment of the Eastern Corporations for possible operations in Russia is not connected with any completed act of spoliation. Von Knieriem is found Not Guilty under Count Two of the Indictment.

Ter Meer:

We find that the proof establishes the guilt of the Defendant Ter Meer under Count Two of the Indictment beyond reasonable doubt. He was prominently connected with the activities of Farben in the acquisition of the Polish property and in the Francolor acquisition. The evidence establishes that Ter Meer acted for Farben in the selection of the personnel to operate the plants. There can be no doubt that the initiative in acquiring the Polish property came from Farben, and that Ter Meer, as Chairman of the Technical Committee, was fully advised in regard to Farben's contemplated action and the course of the negotiations. He issued instructions in connection with the negotiations. He acted with the Defendant von Schnitzler in applying for the license to purchase the Boruta plant. We have found no criminality in the Winnica stock acquisition, but the fact that this contract was signed by the Defendant Ter Meer is indicative of the extent to which he was apprised of, and connected with, the course of action of Farben in Poland. It is clear that Ter Meer took a consenting part in Farben's acts of spoliation in Poland, and participated with von Schnitzler throughout this matter.

Ter Meer took a prominent part in the planning for



contemplated spoliation in Soviet Russia, but, as we have heretofore indicated, this did not result in any completed spoliative act. Nor is the evidence sufficient in any way to connect the Defendant Ter Meer with spoliation in the case of Norsk-Hydro.

Ter Meer was a guilty participant in Farben's acquisition of the confiscated Mulhouse plant, as he knew of and tacitly approved the acquisition. He approved the Rhone-Poulenc license agreement, but, as we have indicated, criminality cannot be predicated on that transaction.

Ter Meer was a leading participant in the Francolor negotiations. He attended the important Wiesbaden meetings at which the Farben demands were served on the French, and at which pressure was used to obtain the consent of the French. He received reports from Farben representatives that were sufficiently in detail fully to apprise him of the course of the negotiations and the tactics being employed. He signed the Francolor Convention. Ter Meer had intimate personal knowledge of the plight of the French industry and was fully aware of Farben's action in gaining the support of the Nazi authorities in making it difficult for the French industry to resume production. We cannot accept the defense that this was a normal business transaction between parties free to negotiate, regardless of mutual clauses contained in the Francolor Convention. Ter Meer's participation in this entire transaction was at the important level of policy-making. He was dictating the terms and acting, along with von Schnitzler, as the responsible Vorstand member handling the matter. He is criminally connected with the Francolor transaction.

We find the Defendant Ter Meer Guilty under Count Two of the Indictment.

Schneider, Kuehne and Lautenschlaeger:

The evidence to support the charges of participation in the spoliation alleged in Count Two of the Indictment is substantially the same in the individual cases of the Defendants Schneider, Kuehne, and Lautenschlaeger. It is the contention of the Prosecution that these defendants are responsible for, knew of, and approved the program of Farben to acquire, with the aid of force and compulsion, property in occupied territories. It is contended that these defendants, as members of the Vorstand, attended Vorstand meetings, meetings of the Farben committees, and other policy-making groups, at which such action was authorized or approved. It is further contended that they received reports of a character to advise them of the contemplated action. We have carefully examined this evidence. What we have said with reference to the individual responsibility of the Defendant Gajewski is applicable here. We do not consider that the evidence has sufficiently established the degree of affirmative action with knowledge of the details importing criminality to warrant a finding of guilt in the case of these three defendants. Each is, therefore, acquitted of the charges under Count Two of the Indictment.

Ambros:

The Defendant Ambros was a member of Farben's Vorstand during the entire period of World War II. It is the contention of the Prosecution that, in that capacity and as a member of the TEA, Ambros participated in planning the spoliation and plunder, and that he affirmatively approved and ratified all of the spoliative acts committed by Farben. The proof as to the action of Ambros is not convincing, even though he was frequently present at the meetings referred to. We cannot find that the evidence connects him with the illegal acquisition of property by Farben. It is true that he was pressing the matter

of the operation of the Russian Buna plants by Farben experts and demanded that Farben be given exclusive rights with regard to the Russian plants and processes. However, as we have heretofore indicated, the evidence does not establish any completed act of spoliation in Russia in which these defendants were participants. The contemplated spoliation was prevented by the defeat of the German Army in Russia. He was willing to exploit and acquire the Russian plants for Farben, but these plans were not realized. We do not consider that his activities in furthering production in the Francolor plants, following their acquisition by Farben, warrant a finding of guilt.

Ambros is acquitted under Count Two of the Indictment;

Buergin:

The evidence establishes that the Defendant Buergin was specifically informed concerning plans to have the Boruta plant in Poland taken over by a German corporation organized for that purpose, but he was not personally a participant in the acquisition by Farben of this plant. It is not clearly established that his trip to Poland was directly connected with any of the acts of Farben in acquiring Polish property. The evidence of his report to the Vorstand on the economic conditions and technical efficiency of the plants is not directly linked with subsequent action by Farben. We likewise find that the evidence is insufficient for a finding of guilty against Buergin on the particulars of the Indictment charging spoliation in Russia, France, and Alsace-Lorraine.

In the case of Norway, however, Buergin bears special responsibility. He initiated the recommendation for Farben's participation in the aluminum project in Norway and has admitted that permanent participation and acquisition of interests in the Norwegian production of light metals was contemplated.



Buergin wrote to Schmitz and Ter Meer recommending participation on a large scale in the plan to exploit the Norwegian resources in the interest of light metals production for the Luftwaffe. The recited evidence establishes his guilt under Count Two. But it does not appear that he was in anyway connected with the activities whereby the French shareholders were deprived of their majority interest in Norsk-Hydro. For his participation in the first aspect of spoliation in Norway we find that he is guilty under Count Two of the Indictment.

THE PRESIDENT: The Tribunal will rise for its recess.

(A recess was taken.)

Bustefisch:

The Defendant Bustefisch was a member of Farben's Vorstand, and as such is charged in the Indictment with participation in spoliation of the German-occupied territories of Poland, France, Norway, and Soviet Russia. The evidence to support these allegations had been carefully examined. We deem it insufficient to establish that the Defendant Bustefisch was directly connected with these spoliative activities, or that he was personally involved therein, within the meaning of Control Council Law No. 10.

Special stress is placed by the Prosecution on Bustefisch's connection with the Continental Oil Company which, according to findings of the IMF, was engaged in spoliation activities in occupied territories in the East. Bustefisch was a member of the Aufsichtsrat of Continental Oil Company, but it does not appear from the evidence that he was particularly active in the management of the concern. Nor does it appear that he ordered, authorized, or directed the activities of Continental Oil Company which amounted to spoliation. The evidence does not establish beyond reasonable doubt that Bustefisch is guilty under Count Two by virtue of his activities in the Continental Oil Company, and he is, accordingly, acquitted of all the charges under this Count.

Haefliger:

It has been proved that Haefliger, a member of the Vorstand, knew of Farben's proposal that Farben be appointed as trustee for the Polish plants and that, at the suggestion of von Schnitzler, he approached the Ministry of Economics in a preliminary conference on the subject of the Polish plants. The conference was limited, however, to a discussion of the appointment of experts necessary for commercial and technical operations, and the preliminary reaction of the Ministry was unfavorable. Haefliger is not connected by the evidence with any subsequent action of Farben's for acquisition of the Polish plants.

Haeffliger has testified that he did not know at the time that the plan was to acquire these plants permanently for Farben. We cannot say that it has been proved beyond reasonable doubt that Haeffliger was a party to the spoliation and plunder by Farben of the Polish factories. His subsequent action as a member of the Vorstand must be considered on the same basis as the evidence with reference to the other defendants, and would not warrant a finding of guilt.

Haeffliger was, however, criminally connected with the plans for the spoliation of Norway. Haeffliger reported to the Vorstand on the participation of Farben in the proposed exploitation of the Norwegian resources in the interest of the German war economy. He attended meetings at the Reich Air Ministry at which details of the project and participation therein were planned and discussed. He was fully aware of the nature of the project as an armament expansion program. He knew that the plan contemplated, as a subsidiary detail, the acquisition of the majority shares of the French shareholders. We are convinced beyond reasonable doubt that his activity in relation to this whole matter was on such a comprehensive basis that he knew that Norsk-Hydro was being forced to enter the project involving use of its facilities during military occupancy in the interest of enemy armament against the will and consent of the owners, and that the French shareholders were not voluntarily parting with their majority interest in Norsk-Hydro. He approved and participated in this course of action.

For his connection with, and participation in the Norwegian enterprise, Haeffliger is Guilty under Count Two of the Indictment.

Ilgnor:

The Defendant Ilgnor was an active participant in the case of spoliation of Norway and must be held Guilty under Count Two of the Indictment. He was the leading participant in arranging and supervising



the various negotiations leading to the Norsk-Hydro agreement, whereby the French shareholders were deprived of their majority interest in favor of a German majority including Farben. He was fully informed concerning the scope of the planned exploitation of the Norwegian economy in the light-metals program for the Luftwaffe and joined energetically in the plan. The plan contemplated permanent acquisition by Farben of a substantial interest in the light-metals field in Norway. He was thus a participant and party to the plan to force the use of Norsk-Hydro's facilities in the expansion program for German needs, without regard to the needs of Norwegian economy. He was similarly a party to the scheme to utilize the opportunity to establish a German majority in the share ownership of Norsk-Hydro. Ilgner admits that the French were not represented at the meeting of 30 June 1941 at which Norsk-Hydro's participation in Nordisk-Lettmetall and the increase in Norsk-Hydro's capitalization was voted. The evidence establishes that Ilgner took the position that the presence of all the shareholders was not essential for the safeguarding of their rights. Although much conflicting evidence has been introduced on this point, we are convinced that the French shareholders in Norsk-Hydro were not fully advised of the full scope of the Nordisk-Lettmetall project; they never intended to lose the majority interest in Norsk-Hydro, and went along after the full plan developed solely because they feared confiscation of their plants in Norway during the military occupancy. Ilgner himself stated in an affidavit:

"I do not know in detail the motives which guided the French bank when it agreed to the increase of the capital stock of Norsk-Hydro, by which procedure the French majority interest was reduced to a minority interest. I should say they chose this alternative as the lesser evil, in the last analysis, I.G. Farben participated and advised the bank to agree . . . ."

In our view the evidence establishes beyond reasonable doubt

the Defendant Ilgner's criminal complicity in the spoliation of Norsk-Hydro, and the Defendant Ilgner is Guilty under Count Two.

We do not find that the evidence establishes beyond reasonable doubt any connection of the Defendant Ilgner with the other particulars alleging acts of spoliation under Count Two.

Jaehne:

It is the contention of the Prosecution that Jaehne, as leader of Farben's Offenbach plant, participated in the acquisition of the dismantled equipment which was shipped from Wola to that plant. The evidence on this point is conflicting. Subordinate employees testified that Jaehne was not, in fact, informed of the purchase. We have concluded that there is doubt concerning his knowledge of this matter and, as this is the only connection of the Defendant Jaehne with Farben's spoliative activities in Poland, he is acquitted on this particular of Count Two.

But the evidence does establish Jaehne's participation in certain of the negotiations with governmental authorities prior to the acquisition by Farben of the confiscated Alsace-Lorraine oxygen and acetylene plants, in which he obtained agreement in accordance with Farben's wishes. Jaehne was fully informed of, and took a consenting part in, Farben's acts of spoliation in the acquisition of these plants. That it was Farben's purpose from the outset to acquire the plants permanently is fully established by the evidence. The disruption of industry in Alsace-Lorraine may have made it necessary for the occupying authorities to reactivate the plants, but this defense is not available when it is shown clearly that Farben's purpose was the permanent acquisition of the plants and not their mere reactivation in the interest of the local economy. As the matter was stated by Mayer-Wegelin, an employee of Farben's who handled the major part of the negotiations with the Nazi governmental authorities:

"No negotiations were conducted with these

former owners, nor were their interests considered by us. We rather negotiated with the sequestrators appointed by the German Reich. We were indeed aware that the purchase of the real property and of the plants as far as they still existed might be attacked under international agreement. We, therefore, recognized the possibility that at a later time we might have to return the real property . . . In other words; in order to maintain our oxygen position we reached the result that we should assume the risk of having to return the property."

Behne's connection with this matter was such that he must be held criminally responsible under this aspect of Count Two of the Indictment.

There is not sufficient evidence to warrant his conviction under any of the other particulars set forth in Count Two.

Mann:

Mann's activities in relation to the spoliation of Norway and Russia have not been proven in sufficient detail to warrant a finding of criminal guilt on those particulars of Count Two. He was not active in the Francolor matter, though the evidence does indicate that Farben's plans to acquire a majority interest in the French dyestuffs industry came to his attention during the course of his preliminary negotiations with the Nazi authorities in France prior to the Rhone-Poulenc transaction. It appears that his connection with the Francolor matter was only incidental to his major interest and activity in the Rhone-Poulenc matter. His other knowledge and his activity as a member of Farben's Commercial Committee and as a member of the Vorstand are likewise insufficient for a finding of guilt. What we have said in the case of the Defendant Gajewski in this regard is equally applicable to the case of Mann. As the Rhone-Poulenc transactions, in which he was the leading actor, do not constitute a crime within the jurisdiction of this Tribunal, and as the evidence does not otherwise connect him with other acts declared to be criminal, Mann is acquitted under Count Two of the Indictment.



Oster:

The actions of Oster, with reference to the charges under this Count as to Poland, Alsace-Lorraine, and France, cannot be differentiated from those of other members of the Vorstand, who, for lack of sufficient knowledge of the complete facts, cannot be considered as participating in ordering or authorizing a course of action known to be criminal. The Prosecution, however, charges Oster with special responsibility for his activities in connection with the case of spoliation in Norway. It appears that Oster served as a member of the Aufsichtsrat of Norsk-Hydro after the Nordisk-Lettmetall project was inaugurated, and that from meetings of the Vorstand and other reports which he received he was informed of the general nature and purpose of the program for the expansion of light metals in Norway by the use of the facilities of Norsk-Hydro in the interest of production for the Luftwaffe. The evidence does not bear out the theory of the Prosecution that the Defendant Oster was personally a party to putting pressure on Norsk-Hydro, or even that he dealt with its officials with duplicity. In fact, Dr. Erickson has given a testimonial of Oster's friendly attitude in the entire matter. However, the proof establishes that Oster knew that the project was being carried out against the wishes of Norsk-Hydro, and that Farben was acquiring permanent interests in properties of Norsk-Hydro through the Nordisk-Lettmetall project and as a result of the compulsion of the military occupancy. With his knowledge he approved Farben's participation in the project. He is Guilty, therefore, under Count Two of the Indictment.

Wurster:

Immediately after the collapse of Poland, Wurster made a trip to Poland accompanied by an official of the Reich Office for Economic Development, for the purpose of inspecting Polish chemical plants. He submitted a memorandum report in a letter to the Defendant Buerger, analyzing conclusions reached during the inspection trip. The report expressed conclusions as to the future value of these plants to the German economy and for military purposes, recommending in some instances, continued operation and in other cases dismantling of certain plant facilities. But it is not established that this report was the basis of official action taken either by the Reich authorities in the East or by Farben with respect to these properties. We are unable to say that this action, standing alone, supports a finding of guilty under Count Two in regard to the Polish properties.

With reference to Alsace-Lorraine, the evidence does establish that Wurster had conferences with various persons concerning the utilization of plant facilities in Alsace-Lorraine. Some of these plants were closed down and abandoned. The evidence is by no means clear that my activities of Wurster resulted in effecting the transfer of property to I.G. Control or ownership. The evidence fails to prove that Wurster himself ever dealt with any of the authorities to promote Farben's acquisition of these plants. Here a reasonable doubt enters, and we cannot find that Wurster's approach to the authorities was with a view to purchasing those plants for Farben.

We find that Wurster is not substantially involved in any of the acts charged in this Count.

The defendant Wurster is, therefore, Not Guilty under Count Two of the Indictment.

Duerrfeld, Gattineau and von der Heyde:

Four of the defendants — namely, Duerrfeld, Gattineau, von der Heyde and Kugler — were not members of the Vorstand of I.G. Farben.

The evidence does not establish any connection between the activities of the defendant Duerrfeld and the offenses against property charged in

this Count. We, therefore, find that the defendant Duerrfeld is Not Guilty under Count Two of the Indictment.

The defendant Gattineau is likewise Not Guilty. The acts of alleged spoliation with which he was intimately connected all related to his activities in the Austrian and Czechoslovakian acquisitions, which, under the ruling of the Tribunal above referred to, were held not to constitute crimes against humanity or war crimes within the jurisdiction of the Tribunal. Gattineau's mere presence at Commercial Committee meetings, at which reports were made concerning the Rhone-Poulenc negotiations, and his other general activities in the commercial field as an employee of Farben's, are insufficient participation upon which to predicate a finding that he is guilty under the spoliation count.

In its final brief the Prosecution concedes that the evidence has not established beyond a reasonable doubt the guilt of the Defendant von der Heyde under the charges in Count Two. We fail to find any substantial evidence connecting von der Heyde with the charges. He is acquitted under Count Two.

"Kugler:

Although not a member of Farben's Vorstand, Kugler was a member of the Commercial Committee and was an active Farben leader in the dyestuffs field. We find that the proof does not establish beyond a reasonable doubt sufficient connection of the acts of the Defendant Kugler with Farben's acts of spoliation in Poland and Alsace-Lorraine to justify a finding of guilt based on those particulars of the Indictment. But Kugler was an active participant, as one of the representatives of Farben, in the negotiations and other steps leading to the Francolor agreement. It is true that he did not act independently in this matter and was under the direction of two Vorstand members, von Schnitzler and ter Meer, both of whom had authority and policy-making functions far superior to those of Kugler. He participated in the preliminary discussions with the Amistice Commission and in the meetings at Wiesbaden in November 1940, at which the Farben demands were



served on the French dyestuffs representatives and pressure was exerted to force the French to agree to Farben's desire for a 51% interest in the French industry. It was Kugler who arranged with the authorities during the military occupation that pressure should be applied, and who obtained support for the suggestion "that no alleviations are offered to production which might weaken the opponent's will to negotiate." Kugler was fully advised of all of the steps taken and knew that the Francolor agreement was being imposed on the French against their will and without their free consent. He participated in the meeting at which the Francolor agreement was reached and subsequently served on one of the important committees of Francolor. While he was not the dominant figure initiating the policies leading to the unlawful acquisitions, he was criminally connected with the execution of the entire enterprise and must be held Guilty under Count Two.

THE PRESIDENT:

Count Three.

Count Three charges the defendants, individually, collectively, and acting through the instrumentality of Farben, with the commission of war crimes and crimes against humanity as defined by Article II of Control Council Law No. 10. It is alleged that they participated in the enslavement and deportation to slave labor of the civilian population of territory under the belligerent occupation or otherwise controlled by Germany; the enslavement of concentration-camp inmates, including Germans; and the use of prisoners of war in war operations and work having a direct relation to war operations. It is further alleged that enslaved persons were mistreated, terrorized, tortured, and murdered.

The general charge is followed by a statement of particulars, consisting of twenty-two numbered paragraphs. From these it appears that, to sustain this Count of the Indictment, the Prosecution relies upon four groups of alleged facts characterized as follows: (a) the role of Farben in the slave-labor program of the Third Reich; (b) the use of poison gas, supplied by Farben, in the extermination of inmates of concentration camps; (c) the supplying of Farben drugs for criminal medical experimentation upon

enslaved persons, and (d) the unlawful and inhumane practices of the defendants in connection with Farben's plant at Auschwitz. These aspects of the case will be given due consideration in the course of this subdivision of the Judgment, but not in the order stated.

Poison Gas:

The indictment charges in Paragraph 131 that, "Poison gases.... manufactured by Farben and supplied by Farben to officials of the SS were used in ..... the extermination of enslaved persons in concentration camps throughout Europe." In substantiation of this charge the Prosecution established that Cyclon-B gas was supplied to concentration camps in large quantities for extermination by Deutsche Gesellschaft fuer Schaedlingsbekampfung, commonly called Degesch, in which Farben had a 42.5% interest, and that said firm had an administrative committee or supervisory board consisting of 11 members, including the Defendants Mann, Hoerlein and Wurster. The connection of the defendants with these transactions will, therefore, bear more careful scrutiny.

Cyclon-B which had wide use as an insecticide long before the war, was invented by Dr. Walter Heerd, who appeared before the Tribunal as a witness. The property rights to Cyclon-B belonged to the firm of Deutsche Gold und Silberscheideanstalt, commonly called Degussa, but actual manufacture was performed for it by two independent concerns. Degussa was a competitor of Farben's and of the Th. Goldschmidt A.G. in the production and sale of insecticides. Degussa had, for a long time, sold Cyclon-B through the instrumentality of Degesch, which it dominated and controlled. Degussa, Goldschmidt and Farben, therefore, entered into an arrangement with Degesch whereby it became the sales outlet for insecticides and related products for all three concerns. As already pointed out, Farben took a 42.5% interest in Degesch. The remaining shares in the concern were divided, 42.5% to Degussa and 15% to Goldschmidt. The management of Degesch was the direct responsibility of Dr. Gerhard Peters, but the firm had an executive board of 11 members — 5 from the Farben Vorstand (the defen-

29 July-A-FL-23-5-Stewart (Judge Shake reading)  
Court No. VI, Case VI

fendants Mann, Hoerlein and Wurster, together with Brueggemann, who was severed from this trial, and Weber-Andreas, deceased), 4 from Degussa, 1 from Goldschmidt, and Dr. Heerdt, who was connected with a Degesch subsidiary. The defendant Mann was the chairman of the board. Degesch had originally been organized as an outlet for Degussa products, exclusively. Even after Farben and Goldschmidt acquired participating interests in the firm it continued to maintain its headquarters in the Degussa building. Its office staff was recruited from and compensated on the same basis as Degussa personnel.



The evidence does not warrant the conclusion that the executive board or the Defendants Mann, Hoerlein, or Wurster, as members thereof, had any persuasive influence on the management policies of Degesch or any significant knowledge as to the uses to which its production was being put. Meetings of the board were infrequent and the reports submitted to the members thereof were not very enlightening. It seems fair to conclude that the board's principal function was to recognize the financial investments of the participating stockholders and that operational policies were largely left to Dr. Peters, subject only to the general supervision of Degussa's executives with whom he was in close contact.

The proof is quite convincing that large quantities of Cyclon-B were supplied to the SS by Degesch and that it was used in the mass extermination of inmates of concentration camps, including Auschwitz. But neither the volume of production nor the fact that large shipments were destined to concentration camps would alone be sufficient to lead us to conclude that those who knew of such facts must also have had knowledge of the criminal purposes to which this substance was being put. Any such conclusion is refuted by the well-known need for insecticides wherever large numbers of displaced persons, brought in from widely scattered regions are confined in congested quarters lacking adequate sanitary facilities.

The testimony of Dr. Peters is highly important on the issue of the defendants' guilty knowledge. He related the details of a conference that he had in the summer of 1943 with one Gerstein, introduced by Professor Hrugowsky, director of the health institute of the notorious Waffen SS. After swearing Dr. Peters to absolute secrecy under penalty of death, Gerstein revealed the Nazi extermination program which he

said emanated from Hitler through Himmler. There followed a long conference concerning the efficacy of different methods of extermination, including the use of Cyclon-B for that purpose. Dr. Peters stated emphatically that he was thereafter extremely careful to observe the admonition to treat this conference as Top Secret, and he negatived the assumption that any of the defendants had any knowledge whatever that an improper use was being made of Cyclon-B.

We are of the opinion that the evidence falls short of establishing the guilt of any of the defendants on this aspect of Count Three.

#### MEDICAL EXPERIMENTS:

It is further charged under Count Three (Sub-section B of Paragraph 131) of the Indictment that "... various deadly pharmaceuticals manufactured by Farben and supplied by Farben to officials of the SS were used in experimentations upon... enslaved persons in concentration camps throughout Europe. Experiments on human beings (including concentration-camp inmates) without their consent were conducted by Farben to determine the effect of.... vaccines and related products."

The Prosecution asserts, and it asks us to find, that the Defendants Lautenschlaeger, Mann, and Hoerlein, each, participated in supplying Farben pharmaceuticals and vaccines to the SS for the purpose of having them tested, knowing that the tests would be conducted by medical experimentations upon concentration-camp inmates without their consent; that each of said defendants took the initiative in getting Farben products tested by the SS through the means of criminal medical experiments; and that these criminal medical experiments resulted in bodily harm and death to a number of persons.

We may say, without further elaboration, that the evidence has convinced us that healthy inmates of concentration

camps were deliberately infected) with typhus against their will and that drugs produced by Farben, which were thought to have curative value in combating said disease, were administered to such persons by way of medical experimentation, as a result of which many of such persons died. That such practices are criminal and a violation of international law was conclusively determined by United States Military Tribunal I in the case of the United States vs. Brandt, et al. Our problem is, therefore, that of saying whether the evidence establishes beyond a reasonable doubt that the defendants, or any of them, "were principals in, accessories to, ordered, abetted, took a consenting part in, were connected with plans and enterprises involving, (or) were members of organizations or groups, including Farben, which were connected with, the commission of said crimes," as charged in the Indictment.

We deduce from the evidence that typhus or spotted fever is communicated to a human being by the bite of a louse. There is always danger of an epidemic of this disease where a large number of persons are thrown together amid unsanitary conditions, such as are frequently found on army fronts and in concentration camps. Typhus first made its appearance on the eastern front during the war, and the responsible officials of Germany were very apprehensive that it would spread to the civilian population. Desperate efforts were made, therefore, to find a remedy that would cure the disease or at least immunize against it. At the time this problem became acute, the generally recognized method of producing an efficient typhus immunization vaccine was the so-called Weigl process. This vaccine was developed from the intestines of infected lice, and a skilled scientist could only produce in one day enough of it to treat ten persons. There was, consequently, an urgent need for finding a way to greatly expand the production of this substance.



For several years previously Farben's Behring-Werke, among others, had been experimenting with the possibility of breeding typhus bacilli in chicken eggs, and a process based on that idea had been developed, whereby a trained technician could in a single day produce enough vaccine to treat 15,000 persons. This vaccine lacked scientific verification and acceptance by the medical profession, however, and Farben was extremely anxious to win this recognition for its product. To that end it participated in conferences with governmental health agencies and urged that its product be tested and accepted.

Through the years Farben had developed a more or less routine method for testing the efficacy of its pharmaceutical discoveries after these had passed the research stage. If it was believed that a new drug had probable medicinal value and that it could be used without harmful results, samples were sent to recognized physicians for testing on patients afflicted with the particular disease with which the remedy was designed to cope. These physicians, in turn, submitted detailed reports covering their experiences with the drug, after which Farben scientists assembled and studied this data and concluded therefrom whether the firm would sponsor the product and place it on the market. The Prosecution does not deny that this was the procedure generally followed by Farben. It asserts, however, that the circumstances surrounding the testing of Farben's vaccine, as well as with respect to its acridine, rutenol, and methylene blue, in combating typhus discloses that the Defendants Hoerlein, Lautenschlaeger, and Mann, in particular, well knew that concentration-camp inmates were being criminally infected with the typhus virus by SS doctors for the deliberate purpose of conducting experiments with these Farben products.

The facts and circumstances principally relied upon by

the Prosecution to establish guilty knowledge on the part of said defendants may be summarized as follows: (1) criminal experiments were admittedly conducted by SS physicians on concentration-camp inmates; (2) said experiments were performed for the specific purpose of testing Farben products; (3) some of said experiments were conducted by physicians to whom Farben had entrusted the responsibility of testing the efficacy of its drugs; (4) the reports made by said physicians were calculated to indicate that illegal experiments had been conducted; and (5) drugs were shipped by Farben directly to concentration camps in such quantities as to indicate that these were to be used for illegitimate purposes.

Without going into detail to justify a negative factual conclusion, we may say that the evidence falls short of establishing the guilt of said defendants on this issue beyond a reasonable doubt. The inference that the defendants connived with SS doctors in their criminal practices is dispelled by the fact that Farben discontinued forwarding drugs to these physicians as soon as their improper conduct was suspected. We find nothing culpable in the circumstances under which quantities of vaccines were shipped by Farben to concentration camps, since it was reasonable to suppose that there was a legitimate need for such drugs in these institutions. The question as to whether the reports submitted to Farben by its testing physicians disclosed that illegal uses were being made of such drugs revolves around a controversy as to the proper translation of the German word "Versuch" found in such reports and in the documents pertaining thereto. The Prosecution says that "Versuch" means "experiment" and that the use of this word in said reports was notice to the defendants that testing physicians were indulging in unlawful practices with such drugs. The defend-

ants contend, however, that "Versuch," as used in the context, means "test" and that the testing of new drugs on such persons under the reasonable precautions that Farben exercised was not only permissible but proper. Applying the rule that where from credible evidence two reasonable inferences may be drawn, one of guilt and the other of innocence, the latter must prevail, we must conclude that the Prosecution has failed to establish that part of the charge here under consideration.

**FAEBEN AND THE SLAVE-LABOR PROGRAM:**

The Prosecution does not contend that Farben instituted a slave-labor program of its own. On the contrary, it is the theory of the Prosecution that the defendants, through the instrumentality of Farben and otherwise, embraced, adopted, and executed the forced-labor policies of the Third Reich, thereby becoming accessories to and taking a consenting part in the commission of war crimes and crimes against humanity in violation of Article II of Control Council Law No. 10. This, therefore, calls for a brief resume of the slave-labor program of the Reich government during the war years. For this purpose we may rely upon the Judgment of the IMT, since Article X of Military Government Ordinance No. 7 provides that, before these Tribunals, the "statements by the International Military Tribunal in the Judgment in Case No. 1 constitute proof of the facts stated, in the absence of substantial new evidence to the contrary." The findings of the IMT with respect to the criminal character of the slave-labor program of the Third Reich were not challenged in this trial.

From the Judgment of the IMT we may deduce that by the end of 1941 Germany had achieved effective dominion over territories with an aggregate population of 350,000,000 people. In the early stages of the war an effort was made



to obtain, on a voluntary basis, sufficient foreign workers for German industry and agriculture, to replace those who were drafted into military service, but by 1940 this system had failed to produce enough workers to maintain the volume of production deemed necessary for the prosecution of the war. The compulsory deportation of laborers to Germany was then begun and, on 21 March 1942, Fritz Sauckel was appointed Plenipotentiary-General for the Utilization of Labor, with authority over "all available manpower, including that of workers recruited abroad, and of prisoners of war." From that time on the Nazi slave-labor program was prosecuted with unrelenting cruelty and persistence. The IMT said that "Manhunts took place in the streets, at motion picture houses, even at churches and at night in private houses" of occupied countries, to meet the ever-increasing demands of the Reich for human labor. At least 5,000,000 persons were forcibly deported from the occupied territories to Germany to support its war efforts.

The vast reservoir of slave laborers utilized by the Nazis included involuntary foreign workers, concentration-camp inmates, and prisoners of war. Many of these were used in activities connected with military operations against their own countries, in direct violation of express international law, as well as in general industry and in agricultural pursuits. The plan under which this comprehensive scheme was implemented and administered is disclosed by the following quotation from the IMT Judgment:

"A Sauckel decree dated 6 April 1942, appointed the Gauleiters as Plenipotentiary for Labor Mobilization for their Gau with authority to coordinate all agencies dealing with labor questions in their Gau, with specific authority over the employment of foreign workers, including their conditions of work, feeding, and housing. Under this authority the Gauleiters assumed control over the allocation of labor in their Gau, including the forced laborers from foreign countries. In carrying out this task the

Gauleiters used many party offices within their Gaue, including subordinate Political Leaders."

On 20 April 1942 Sauckel issued the following instructions concerning the treatment of laborers:

"All the men must be fed, sheltered and treated in such a way as to exploit them to the highest possible extent, at the lowest conceivable degree of expenditure."

During the course of the war the main Farben plants, in common with German industry generally, suffered a serious labor depletion, on account of demands of the military for men to serve in the armed forces. Charged with the responsibility of meeting fixed production quotas, Farben yielded to the pressure of the Reich Labor Office and utilized involuntary foreign workers in many of its plants. It is enough to say here that the utilization of forced labor, unless done under such circumstances as to relieve the employer of responsibility, constitutes a violation of that part of Article II of Control Council Law No. 10 which recognizes as war crimes and crimes against humanity the enslavement, deportation, or imprisonment of the civilian population of other countries.

What we have said about the employment of involuntary foreign laborers is equally applicable to prisoners of war and inmates of concentration camps.

#### THE DEFENSE OF NECESSITY:

The defendants here on trial have invoked what has been termed the defense of necessity. They say that the utilization of slave labor in Farben plants was the necessary result of compulsory production quotas imposed upon them by the government agencies, on the one hand, and the equally obligatory measures requiring them to use slave labor to achieve such production, on the other. Numerous decrees, orders, and directives of the Labor Office have been brought to our attention, from which it appears that said agency assumed dictatorial control over the commitment, allotment,

and supervision of all available labor within the Reich. Strict regulations prescribed almost every aspect of the relationship between employers and employees. Industries were prohibited from employing or discharging laborers without the approval of the agency. Heavy penalties, including commitment to concentration camps and even death, were set forth for violation of these regulations. The defendants who were involved in the utilization of slave labor have testified that they were under such oppressive coercion and compulsion that they cannot be said to have acted with that intent which is a necessary ingredient of every criminal offense.

The existence of the stringent regulations of the Reich labor authorities must be conceded; and this requires us to inquire what opportunity, if any, the defendants had of evading them and what the consequences would have been if they should have attempted to do so. Again, we turn to the Judgment of the IMT for the facts. A few of the ultimate conclusions stated therein will serve our purpose. We quote the following brief excerpts from that Judgment:

"According to (the leadership principle of the NSDAP), each Fuehrer has the right to govern, administer, or decree, subject to no control of any kind and at his complete discretion, subject only to the orders he received from above."

.....

(The Reichstag fire of 28 February 1933)  
"was used by Hitler and his Cabinet as a pretext for...suspending the constitutional guarantees of freedom."

.....

"...a series of laws and decrees were passed which reduced the powers of regional and local governments throughout Germany, transforming them into subordinate divisions of the Government of the Reich."

.....

"...the judiciary was subjected to control... Persons were arrested by the SS for political reasons, and detained in prisons and concen-



tration camps...the judges were without power to intervene in any way."

.....

"Independent judgment, based on freedom of thought, was...quite impossible."

.....

"Germany had accepted the dictatorship with all its methods of terror, and its cynical and open denial of the rule of law."

.....

"Hostile criticism, indeed criticism of any kind, was forbidden, and the severest penalties were imposed on those who indulged in it."

.....

"The opportunity was taken to murder a large number of people who at one time or another had opposed Hitler."

In view of these indisputable facts, established by the highest authority, this Tribunal is not prepared to say that these defendants did not speak the truth when they asserted that in conforming to the slave-labor program they had no other choice than to comply with the mandates of the Hitler Government. There can be but little doubt that the defiant refusal of a Farben executive to carry out the Reich production schedule or to use slave labor to achieve that end would have been treated as treasonous sabotage and would have resulted in prompt and drastic retaliation. Indeed, there was credible evidence that Hitler would have welcomed the opportunity to make an example of a Farben leader.

The question remains as to the availability of the defense of necessity in a case of this kind. The IMT dealt with an aspect of that subject when it considered the effect of Article 8 of its Charter, which provides:

"The fact that the defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment...."

Concerning the above provision the IMT said:

"That a soldier was ordered to kill or torture in violation of the international law of war has never been recognized as a defense to such acts of brutality, though, as the Charter here provides, the order may be urged in mitigation of the punishment. The true test, which is found in varying degrees in the criminal law of most nations, is not the existence of the order, but whether moral choice was in fact possible." (Our emphasis).

Thus the IMT recognized that while an order emanating from a superior officer or from the government is not, of itself, a justification for the violation of an international law (though it may be considered in mitigation), nevertheless, such an order is a complete defense where it is given under such circumstances as to afford the one receiving it of no other moral choice than to comply therewith. As applied to the facts here, we do not think there can be much uncertainty as to what the words "moral choice" mean. The quoted passages from the IMT Judgment as to the conditions that prevailed in Germany during the Nazi era would seem to suggest a sufficient answer insofar as this case is concerned. If or are we without persuasive precedents as to the proper application of the rule of necessity in the field of the law with which we are here concerned.

The case of the United States vs. Flick, et al. (Case 5), tried before Tribunal IV, involved the dominant figure in the German steel and coal industry and five of his business associates. They were charged, among other things, with having been active participants in the slave-labor program of the Third Reich. The Judgment of the Tribunal reviewed the facts and concluded that four of these defendants were entitled to the benefit of the defense of necessity. We quote from that Judgment because the facts therein disclosed are strikingly similar to those developed in the trial of this case:

"The evidence with respect to this Count clearly establishes that laborers procured

under Reich regulations, including voluntary and involuntary foreign civilian workers, prisoners of war and concentration camp inmates, were employed in some of the plants of the Flick Konzern...It further appears that in some of the Flick enterprises prisoners of war were engaged in work bearing a direct relation to war operations.

"The evidence indicates that the defendants had no actual control of the administration of such program even where it affected their own plants. On the contrary, the evidence shows that the program thus created by the state was rigorously detailed and supervised by the state, its supervision even extending into prisoner of war labor camps and concentration camp inmate labor camps established and maintained near the plants to which such prisoners of war and concentration camp inmates had been allocated. Such prisoners of war camps were in charge of the Wehrmacht (Army), and the concentration camp inmate labor camps were under the control and supervision of the SS. Foreign civilian labor camps were under camp guards appointed by the plant management subject to the approval of state police officials. The evidence shows that the managers of the plants here involved did not have free access to the prisoner of war labor camps or the concentration labor camps connected with their plants, but were allowed to visit them only at the pleasure of those in charge."

.....

"Workers were allocated to the plants needing labor through the governmental labor offices. No plant management could effectively object to such allocation. Quotas for production were set for industry by the Reich authorities. Without labor, quotas could not be filled. Penalties were provided for those who failed to meet such quotas. Notification by the plant management to the effect that labor was needed resulted in the allocation of workers to such plant by the governmental authorities. This was the only way workers could be procured."

.....

"Under such compulsion, despite the misgivings which it appears were entertained by some of the defendants with respect to the matter, they submitted to the program and, as a result, foreign workers, prisoners of war, or concentration camp inmates became employed in some of the plants of the Flick Konzern and in



Siemag. Such written reports and other documents as from time to time may have been signed or initialed by the defendants in connection with the employment of foreign slave labor and prisoners of war in their plants were for the most part obligatory and necessary to a compliance with the rigid and harsh Reich regulations relative to the administration of its program."

.....

"The defendants lived within the Reich. The Reich, through its hordes of enforcement officials and secret police, was always 'present', ready to go into instant action and to mete out savage and immediate punishment against anyone doing anything that could be construed as obstructing or hindering the carrying out of governmental regulations or decrees."

.....

"In this case, in our opinion, the testimony establishes a factual situation which makes clearly applicable the defense of necessity as urged in behalf of the defendants Steinbrinck, Burkart, Kulotsch and Terberger."

Tribunal IV convicted two defendants (Weiss and Flick), however, under the slave-labor count. The basis for these convictions was the active solicitation of Weiss, with the knowledge and approval of Flick, of an increase in their firm's freight-car production, beyond the requirements of the government's quota, and the initiative of Weiss in securing an allocation of Russian prisoners of war for use in the work of manufacturing such increased quotas. With respect to these activities the Tribunal concluded that Weiss and Flick had deprived themselves of the defense of necessity, saying:

"The war effort required all persons involved to use all facilities to bring the war production to its fullest capacity. The steps taken in this instance, however, were initiated not in governmental circles but in the plant management. They were not taken as a result of compulsion or fear, but admittedly for the purpose of keeping the plant as near capacity production as possible."

We have also reviewed the Judgment of the General Tribunal of the Military Government of the French Zone of Occupation in Germany,

dated 30 June 1948, in which Hermann Roechling was convicted of participation in the slave-labor program. That Judgment recites that said Roechling was "present at several secret conferences with Goering in 1936 and 1937;" that in 1940 he "accepted the positions of plenipotentiary-general for the steel plants of the departments of the Moselle and of Meurthe-et-Moselle Sud;" that, "stepping out of his role of industrialist, after having demanded high administrative and leading positions concerning the steel exploitation of the Reich," he became "dictator for iron and steel in Germany and the occupied countries;" that in 1943 said Roechling also "lavished advice on the Nazi Government in order to utilize the inhabitants of occupied Countries for the war effort of the Reich;" that he "sent to the Nazi leaders in Berlin a memorandum requesting that he obtain the utilization of Belgian labor in order to develop German industry; that he suggests in this connection that youths of 18 to 25 should be drafted to obligatory work under German command - which would mean the utilization of approximately 200,000 persons;" that he also "requested that negotiations be started immediately in order to obtain a considerable number of Russian youths of about 16 years of age for labor in the iron industry;" that he "requested the taking of a general census of French, Belgian and Dutch youths in order to force them to work in war plants or to draft them into the Wehrmacht together with the promulgation of a law which would make work obligatory in the occupied countries;" and that he also "incited the Reich authorities in the most insidious manner to employ inhabitants of occupied countries and POW's in arduous work, with complete disregard of human dignity and the terms of the Hague Convention." Two defendants were acquitted and two others convicted by the French Tribunal. The latter - von Gerningen and Rodenhauser - were found guilty as co-authors and accomplices to the above-described illegal

employment of prisoners of war and deportees by Hermann Roechling, and to his encouragement of illegal punishments meted out to said involuntary laborers. Said illegal punishments were imposed by a summary court organized, in agreement with the Gestapo, by von Gemmingen and Rodenhauser in the Roechling plant, of which they were both directors. It is thus made clear that the defense of necessity could not have been successfully invoked on behalf of either of said named defendants. Concerning the acquitted defendants, Ernst Roeschling and Albert Maier, the High Tribunal expressly said that the evidence did not establish that either of them exercised initiative in connection with the slave-labor program.

It is plain, therefore, that Hermann Roechling, von Gemmingen, and Rodenhauser, like Weiss and Flick, were not moved by a lack of moral choice but, on the contrary, embraced the opportunity to take full advantage of the slave-labor program. Indeed, it might be said that they were, to a very substantial degree, responsible for broadening the scope of that reprehensible system.

From a consideration of the IMT, Flick, and Roechling judgments, we deduce that an order of a superior officer or a law or governmental decree will not justify the defense of necessity unless, in its operation, it is of a character to deprive the one to whom it is directed of a moral choice as to his course of action. It follows that the defense of necessity is not available where the party seeking to invoke it was, himself, responsible for the existence or execution of such order or decree, or where his participation went beyond the requirements thereof, or was the result of his own initiative.

Auschwitz and Fuerstengrube:

As early as 1938, the erection of a plant for the production of Buna rubber in the eastern part of Germany was discussed between Ter Meer and the Reich Economics Ministry. A site was considered in



Upper Silesia and another in the northern part of Sudetenland. Later, at the time the site at Auschwitz was selected, Norway was also considered.

At a conference in the Reich Ministry of Economics on 6 February 1941, the planning of the expansion of Buna production was discussed. Ambros and ter Meer were present. It was reported that at a previous meeting held on 2 November 1940, the Reich Ministry of Economics had approved such expansion and Farben was instructed to choose an appropriate site in Silesia for a fourth Buna Plant. It appears that, pursuant to this instruction and upon the recommendation of the Defendant Ambros, the site at Auschwitz was chosen.

It was estimated that the new Buna plant would have a production capacity of 30,000 tons per year. It was planned to combine the Buna factory with a new fuel-producing plant on the same site, but Buna was to be given preference. A number of considerations entered into the selection of Auschwitz: they included an ideal topographical location which was not vulnerable to air attacks from the west, the proximity to important raw materials, an abundant supply of coal and water, and the availability of labor. The labor situation embraced two factors: the comparatively dense population of the area and the nearby concentration camp Auschwitz, from which forced labor could be obtained. The evidence is sharply conflicting as to the importance of the concentration camp in deciding upon the location of the plant. We are satisfied, after a thorough consideration of the evidence, that while the camp may not have been the determining factor in selecting the location, it was an important one and, from the beginning, it was planned to use concentration-camp labor to supplement the supply of workers.

The three Farben officials most directly responsible for construction at Auschwitz were Ambros, Buetefisch, and Duerrfeld.

Ambros was the technical expert with respect to Buna. He was a member of the planning committee, whose meetings he attended regularly. Bustafisch was the expert in regard to fuels and dealt with the planning and erection of the fuel-producing plant. His headquarters were at Leuna, a Farben plant devoted mainly to important fuel production. According to his own testimony he went to Auschwitz about twice a year and informed himself about the progress of the construction project. He visited the site and the various workshops and saw the concentration camp inmates at work. He visited the main concentration camp at Auschwitz in the winter of 1941-1942 in company with some thirty important visitors, among whom was Dr. Ambros. On this visit he saw no abuse of inmates and thought that the camp was well-conducted. He never visited the labor camp of Monowitz. The Defendant Duerrfeld, as chief engineer and later as manager of the construction work at Auschwitz, had general supervision over the work. Numerous witnesses have testified as to his presence on the site on different occasions. He made frequent inspection trips during which he observed the laborers at work. He also visited the adjoining labor camp of Monowitz, over which the SS had supervision.

Duerrfeld reported that Hoess, the camp commander of the concentration camp, was very willing to support the construction management to the best of his ability and that he would furnish for 1941 about 1,000 unskilled laborers. In 1942 this number could be raised to 3,000 or 4,000. Farben was to assist in erecting barracks by supplying wood and also some iron. The prisoners were to be utilized in groups of about twenty, supervised by Kapos.

On 4 March 1941, a circular was issued from the office of the Plenipotentiary for the Four-Year Plan in Berlin, directed to Ambros and containing certain information regarding Auschwitz. This letter advised that the Inspector of Concentration

Camps and the Chief of the Main Economic and Administration Office had been ordered to get in touch with the construction manager of the Buna Works and to aid the construction project by means of concentration camp prisoners. The Chief of Himmler's personal staff Gruppenfuehrer Wolf, was to be appointed liaison office between the SS and the Auschwitz works. Copies of this letter were distributed to ter Meer, Buete fish, and Duerrfeld. Shortly thereafter Duerrfeld and Buete fish had a conference with wolf in Berlin, at which the utilization of concentration-camp workers was discussed. The parties were in general accord on the assistance to be rendered by the concentration camp. Wolf made no definite promises and left matters of detail to be arranged by negotiations between Duerrfeld and Hoess, who was the camp commander at Auschwitz.

The first building conference with respect to Auschwitz construction was held on 24 March 1941 in Ludwigshafen. Nine persons were present. They were officials and engineers of Farben. The only two who have been made defendants in this case are Ambros and Duerrfeld. At this meeting it was decided to hold building conferences at weekly intervals for the present. The purpose of the conference was to allot fields work to the individual conference members with a view to avoid overlapping of activities. The members of the conference made reports on performance of their respective duties. Ambros reported that the general planning of the Auschwitz plant was lay at present in the hands of engineers Santo, Duerrfeld, and Mach. Duerrfeld reported on a discussion with Wolf of the head office of the Reichsfuehrung SS, and stated that it had been promised that 700 prisoners of the Auschwitz concentration camp would be assigned to the building site for labor and that an attempt would be made by the head office to procure with other concentration camps so that skilled workers might be transferred to Auschwitz.



All available free labor in Auschwitz was also to be utilized.

On 7 April 1941 a founders' meeting was held at Krattowitz to commemorate the foundings of the plant at Auschwitz. Reich officials of the Office of Industrial Planning and the Office of Economic Planning were apparently in charge of the meeting. They called for plans and reports regarding Auschwitz. Ambros was present with information concerning the Buna plant. Buatfish, whose functions in connection with Auschwitz dealt with fuels, including gasoline, reported that the Fuehrstengrube mines would furnish coal supplies for Auschwitz. The report also states: "By order of the Reichsfuehrer SS extensive assistance from the Auschwitz concentration camp had been promised for the building period. The camp commandant, Sturmabannfuehrer Hoess, had already made arrangements for the employment of his men. The concentration camp would supply prisoners for preliminary work and craftsmen for carpentry and fitting; it would also assist the plant in the feeding of the building workers and would supply the building site with gravel and other materials."

The construction of the Auschwitz plant began in 1941. The Jewish population of the area was evacuated as were many of the resident Poles. Their houses were utilized as quarters for construction workers. Farben did not handle the construction work directly but made contracts with construction firms. These firms, however, called upon Farben to assist in procuring labor. Labor procurement was a Farben responsibility. Free workers were not available in sufficient numbers to cover the requirements of the construction firms.

On 23 October 1941, at a meeting of the Plastics and Rubber Committee, attended by ter Meer and Ambros, the recorder of the committee reported on the state of construction work at Auschwitz. With respect to labor he said: "At present 2,700 men are working on the building site."

The support given by the concentration camp Auschwitz is very valuable. This camp made available 1,300 men and all of its workshops."

By the end of 1941, the construction at Auschwitz was not proceeding satisfactorily. At the fourteenth building conference, held on 16 December 1941, bottlenecks at the construction site were discussed. Among other things, it was reported that the concentration camp could not give the expected help since it was under orders to set up accommodations for 120,000 captured Russians as fast as possible. Other possible sources of labor were considered. These do not appear to include either forced foreign labor or prisoners of war.

In the report of the 19th construction conference, on 30 June 1942, reference is made for the first time to the employment of forced labor other than that from the concentration camp. It appears that 680 Polish forced laborers had been employed recently and therefore no evaluation was as yet possible as to whether or not they were satisfactory. The report also stated that women from the Ukraine were well fitted for excavation work, but the voluntary status of these women workers is not disclosed. At the 20th construction conference, on 8 September 1942, Duerrfeld, Ambros, and Buete fish were present. Duerrfeld reported that the intended sharp increase of labor requirements would continue to strain the provisions for workers and that certain auxiliary supply sources for labor were available, among them being recruitments of Poles, which would provide 1,000 workers, 2,000 Russian workers were to be sent to Auschwitz by order of Sauckel, but no definite promises were at hand. This statement would imply that the Auschwitz construction management was seeking these workers. This report also states that Sauckel promised 5,000 prisoners of war for the building sites in Upper Silesia and that 2,000 of these were intended for Auschwitz while the remainder went to other firms.

Reports of subsequent construction conference show that forced workers and prisoners of war continued to be employed at Auschwitz in construction work. Auschwitz was financed and owned by Farben. While its purpose was the production of Buna and motor fuels which would be of immediate use to the Armed Forces of Germany, the plant was being built on a permanent basis with the ultimate object of operating it in peacetime private industry. The use of prisoners of war in the type of construction disclosed by this record does not appear to be in contravention of the prohibition of the Geneva Convention, and unless their treatment was such as to violate international law it does not appear that a crime was committed in their utilization. The prisoners of war were treated better than other types of workers in every respect. The housing, the food, and the type of work they were required to perform would indicate that they were the favored laborers of the plant site. There may have been isolated instances of ill-treatment but they cannot be attributed to any overall policy of Farben or to acts with which any of the defendants may be charged directly or indirectly. It therefore appears that we need give no further consideration to the employment of prisoners of war at Auschwitz.

The construction workers obtained from the Auschwitz concentration camp were prisoners of the SS. They were housed, fed, guarded and otherwise supervised by the SS. In the summer of 1942 a fence was built around the plant site. SS guards were thereafter not permitted within the enclosure, but they still had charge of the prisoners at all times except when they were actually in the enclosed area. The Auschwitz concentration camp was located about seven kilometers from the plant site. The prisoners were marched to and from that site under SS guard.



The plight of the camp workers in the winters of 1941 1942 was that of extreme hardship and suffering. With inadequate food and clothing, large numbers of them were unable to stand the heavy labor incident to construction work. Many of those who became too ill or weak to work were transferred by the SS to Birkenau and exterminated in the gas chambers.

In 1942, at the instigation of Farben, a separate labor camp known as Monowitz was built adjacent to and across the road from the plant site. This camp was some improvement as to its physical aspects over the Auschwitz concentration camp. The workers, however, were still under the control and supervision of the SS at all times when they were not on the construction site. Those who became unable to work or who were not amenable to discipline were sent back to the Auschwitz concentration camp, or, as was more often the case to Birkenau for extermination in the gas chambers. Even at Monowitz the housing was at times insufficient to reasonably accommodate the large number of workers crowded into the barrack-like facilities. The food was inadequate, as was also the clothing, especially in the winter.

The plant site was not entirely without inhumane incidents. Occasionally beatings occurred by the plant police and supervisors who were in charge of the prisoners while they were at work. Sometimes workers collapsed. No doubt a condition of undernourishment and exhaustion from long hours of heavy labor was the primary cause of these incidents. Rumors of the selections made for gassing from among those who were unable to work were prevalent. Fear of this fate no doubt prompted many of the workers, especially Jews, to continue working until they collapsed. In Camp Monowitz, the SS maintained a hospital and medical service. The adequacy of this service is a point of sharp conflict in the evidence. Regardless of the merits of the opposing contentions on this point, it is clear that many of the workers

were deterred from seeking medical assistance by the fear that if they did so they would be selected by the SS for transfer to Birkenag. The Auschwitz construction workers furnished by the concentration camp lived and labored under the shadow of extermination.

The Defense has stressed, not wholly without merit, that the concentration-camp workers lived under the control of the SS and worked under the immediate employment and direction of the construction contractors (some 200 or more) who were engaged in preparing the site and building the plant. It is clear that Farben did not deliberately pursue or encourage an inhumane policy with respect to the workers. In fact some steps were taken by Farben to alleviate the situation. It voluntarily and at its own expense provided hot soup for the workers on the site at noon. This was in addition to the regular rations. Clothing was also supplemented by special issues from Farben. Despite this, however, it is evident that the defendants most closely connected with the Auschwitz construction project bear great responsibility with respect to the workers. They applied to the Reich Labor Office for labor. They received and accepted concentration-camp workers, who were placed at the disposal of the construction contractors working for Farben. The chief engineer, Duerrfeld, with the advice of other defendants, had a definite responsibility regarding the project in the overall supervision of and authority over the construction work. Responsibility for taking the initiative in the unlawful employment was theirs and, to some extent at least, they must share the responsibility for mistreatment of the workers with the SS and the construction contractors.

Concentration camp workers by no means constituted all of the laborers on the plant site. Free workers were employed in large numbers.

Foreign workers made their appearance there in 1941.

Many, if not all, of these were at first voluntary workers, that is, foreigners who had contracted to come to Germany for a stated amount of pay.

They consisted chiefly of Poles, Ukrainians, Italians, Slavs, French and Belgians. Some experts and technicians were also recruited on a similar basis.

After Sauckel's program of forced labor became effective, workers of this type began to appear at Auschwitz in increasing numbers. The defendants contend that, the recruitment of labor being under direct control of the Reich, they did not know the conditions under which the recruitment took place, and since the foreign workers at first were procured on a voluntary basis, the defendants were unaware later that the method had been changed and that many of the subsequent workers had been procured through a system of forced labor recruitment.

This contention cannot be successfully maintained. The labor for Auschwitz was procured through the Reich Labor Office at Farben's request.

Forced labor was used for a period of approximately three years, from 1942 until the end of the war.

It is clear that Farben did not prefer either the employment of concentration camp workers or these foreign nationals who had been compelled against their will to enter German labor service. On the other hand, it is equally evident that Farben accepted the situation that was presented to it through the Labor Office of the Reich and that when free workers, either German or foreigners, were unobtainable they sought the employment and utilization of people who came to them through the services of the concentration camp Auschwitz and Sauckel's forced-labor program.



29 Jul.48-A-CJ-26-8-Schwab-  
Court 6 case 6

At this time the Tribunal will recess until nine o'clock  
tomorrow morning.

(The Tribunal recessed at 1630 hours until 0900 hours, 30  
July, 1948.)

Official Transcript of American Military Tribunal VI, in the matter of the United States of America, against Karl Krauch, et al, defendants, sitting at Nurnberg, Germany, On 30 July 1948, Justice Shake presiding.

THE MARSHAL: The Honorable, the Judges of Military Tribunal VI.

Military Tribunal VI is now in session. God Save the United States of America and this Honorable Tribunal. There will be order in the court.

THE PRESIDENT: You may make your report, Mr. Marshal.

THE MARSHAL: May it please your Honors, all the defendants are present in the court.

THE PRESIDENT: Judge Morris will continue with the reading of the judgment.

JUDGE MORRIS: Closely associated with Auschwitz was a project for the control by Farben of the output of certain coal mines. At the founders' day meeting the defendant Baetefisch reported that a new company had been founded for the purpose of securing, from the Fuerstengrube Mine, coal supplies for the Auschwitz plant. In this new company Farben controlled 51% of the stock and was, therefore, in a position to determine the destination of the output of the mine. Later, through this same company, Farben acquired the controlling interest in another mine known as Janina. Baetefisch became the chairman of the Aufsichtsrat of the new company, Fuerstengrube GmbH. In this capacity he fitted into the general program of Auschwitz as an expert on fuels. He and the defendant Ambros were important factors in the acquisition of the control of the Janina Mine in 1942. These mines were important in the plans of Farben, for it was intended that their production would be utilized in connection with the manufacture of gasoline from coal in the fuels plant at Auschwitz.

It seems clear from this record that Polish laborers were used by Fuerstengrube in mining operations in 1943. This was long after the conquest of Poland and the imprisonment of the Poles into the ranks of German labor. British prisoners of war were also employed by Fuerstengrube, particularly in the Janina Mine. These prisoners offered considerable resistance to their employers, with the result that they were withdrawn from

labor in the mines in the latter part of 1943. They were replaced by concentration camp workers. A file note discloses that Hoess and Dierckfeld inspected the Janina and Fuerstengrube mines on 16 July 1943. It was then agreed that British prisoners of war should be replaced by concentration camp inmates. It was estimated by the SS that 300 camp inmates could be accommodated at Janina where 150 British prisoners of war were housed. At the Fuerstengrube Mine 600 inmates could be accommodated, and the fencing-in of the camp would be started at once. Another camp was also to be taken over, and it was estimated that altogether it would be possible to use 1,200 or 1,300 inmates at Fuerstengrube.

As we recapitulate the record of Auschwitz and Fuerstengrube, we find that these were wholly private projects operated by Farben, with considerable freedom and opportunity for initiative on the part of Farben officials connected therewith. The evidence does not show that the choice of the Auschwitz site and the erection of a Buna and fuels plant thereon were matters of compulsion, although favored by the Reich authorities, who were anxious that a fourth Buna plant be put into operation. The site was chosen after a survey of many factors, including the availability of concentration camp labor for construction work. As an adjunct of Auschwitz the controlling interest in the Fuerstengrube and Janina Mines was acquired under circumstances that impute knowledge of the fact that they could not be operated successfully by voluntary labor. If voluntary labor was used; first, Poles and prisoners of war and, later, concentration camp inmates. The use of prisoners of war in coal mines in the manner and under the conditions disclosed by this record, we find to be a violation of the regulations of the Geneva Convention and, therefore, a war crime. The use of concentration camp labor and forced foreign workers at Auschwitz with the initiative displayed by the officials of Farben in the procurement and utilization of such labor, is a crime against humanity and, to the extent that non-German nationals were involved, also a war crime, to which the slave-labor program of the Reich will not warrant the defense of necessity.



It also appears that the employment of concentration camp labor was had with knowledge of the abuse and inhumane treatment meted out to the inmates by the SS, and that the employment of these inmates on the Auschwitz site aggravated the misery of these unfortunates and contributed to their distress.

Our consideration of Auschwitz and Fuerstengrube has impressed upon us the direct responsibility of the defendants Durrfeld, Ambros, and Buetefisch. It will be unnecessary to discuss these defendants further in this connection, as the events for which they are responsible establish their guilt under Count Three beyond a reasonable doubt. These defendants are not the only ones connected with the Auschwitz project. The connection of others will be considered when we approach their respective cases.

Krauch

As we further appraise the responsibility of the respective defendants, we find that Krauch, as Plenipotentiary General for Special Questions of Chemical Production, dealt with the distribution of labor that had been allocated to the chemical sector by Sauckel. It was Krauch's responsibility to pass upon the applications for workers made by the individual plants of the chemical industry and, in so doing, he took into account the demands that military service had made upon the plants as well as the labor requirements that resulted from expansion. It seems that Krauch is inextricably involved in the allocation of labor to Auschwitz in a manner that negatives his lack of knowledge of the employment of concentration camp inmates and forced foreign labor on the Auschwitz construction project. On 25 February 1941, Krauch wrote a letter to Ambros in which he referred to Goering's order emphasizing the urgency of the project and advising Ambros of the priority of Auschwitz in the procurement of labor. Later Krauch himself visited the construction site.

On 7 January 1943, Krauch addressed a letter to Durrfeld in which he complimented Durrfeld, as Krauch's commissary, in setting up the Prolitz installation. He then ordered Durrfeld to continue as commissary

for the setting up of the whole Auschwitz plant and states: "I wish to assure you of my personal support in every way in your carrying out of this task."

The minutes of a meeting of the Central Planning Board on 2 July 1943, with Krauch present as one of the board members, discloses that Ambros gave a review of damage, apparently from Allied bombing, the Huls plant of Farben, in which he discussed the labor requirements for reconstruction which involved the procurement of men from the compulsory service of the Reich. The Planning Board promised the fulfillment of Ambros' requests in this respect. It also discussed the labor situation at Auschwitz and the need for more workers, including additional inmates from the Auschwitz concentration camp. With respect to the latter request, it is stated that Reichsfuehrer Himmler should be contacted immediately.

On 13 January 1944, Krauch addressed a letter to President Kehrl of the Central Planning Board, in which he discussed the allocation of labor. It appears that there had been in the past some misunderstanding between Krauch's office and the Armaments Office. Krauch maintained his position by saying:

"May I be allowed to point out, however, that the efforts of my office in such matters as the procurement of foreign labor within the restrictions set out on the initiative of the individual employer by the plenipotentiary General for the Provision of Manpower, and the employment of certain classes of manpower (prisoners of war, inmates of concentration camps, prisoners, units of the Military Pioneer Corps, etc.) have had an effect upon the speed of progress of chemical production, and upon that production itself, which must not be underestimated. I consider that the initiative displayed by my staff in the procurement of labor, a virtue which has proved its worth in the past, must not be repressed in the future."

Krauch vigorously challenges the charges that he participated in the recruitment of slave labor. His agents were active in voluntary recruitment prior to the initiation of the Sauckel program. Some of these agents continued to seek skilled workers for some time thereafter. To what extent, if any, these skilled workers were forced to emigrate to Germany does not appear. The evidence does not convince us that Krauch was either a moving party or an important participant in the initial enslavement of workers in foreign countries. Nevertheless, he did, and we think knowingly, participate in the allocation of forced labor to Auschwitz and other places where such labor was utilized within the chemical field. The evidence does not show that he had knowledge of, or participated in, mistreatment of workers at their points of employment. In view of what he clearly must have known about the procurement of forced labor and the part he voluntarily played in its distribution and allocation, his activities were such that they impel us to hold that he was a willing participant in the crime of enslavement.

The use of prisoners of war in war operations and in work having a direct relation to such operations was prohibited by the Geneva Convention. Under Count Three the defendants are charged with violations of this prohibition. To attempt a general statement in definition or clarification of the term "direct relation to war operations" would be to enter a field that the writers and students of international law have found highly controversial. We therefore limit our observations to the particular facts presented by this record.

On 31 October 1941, Keitel, who was then Chief of the High Command of the Armed Forces of Germany, issued a secret order, the subject of which was "Use of Prisoner of War in the War Industry," wherein he stated that the Fuehrer had ordered that the working power of Russian prisoners of war should be utilized to a large extent to meet requirements of the war industry. He listed examples of the type of work for which these prisoners might be suitable, which included construction work for both the Armed Forces and the armament industry. Other important activities so listed were armament



factories, mining, railroad construction, agriculture, and forestry. The distribution list of this order does not include Krauch or his immediate superior, Colonel Loeb. The fact that Krauch had given favorable consideration to the use of Russian prisoners of war in the armament industry is disclosed by a letter of Kirschner, a subordinate of Krauch, who wrote to General Thomas, Chief of the Office of Military Economy and Armament, on 20 October 1941, that he had discussed the matter with Krauch. Kirschner reports that Krauch had developed an idea concerning the employment of Russian prisoners of war and enclosed a note of Krauch's intentions with his letter. We do not have the benefit of the contents of this note, but we are nevertheless, satisfied that Krauch was in accord with the use of prisoners of war in war industry. But that, in itself, is not sufficient to warrant a finding of Guilty for the commission of war crimes under Count Three. Keitel's order gives no authority to the Plenipotentiary General for Special Question of Chemical Production in the Allocation of prisoners of war to the various plants and industries. This authority is left with the Reich Ministry for Armament and Munitions in agreement with the Reich Ministry for Labor and Supreme Commander of the Armed Forces. The deputies of the Reich Ministry for Armament and Munitions were given authority to enter prisoner of war camps to assist in the selection of skilled workers. We are unable to find in the record any instance of the allocation of prisoners of war by Krauch for purposes prohibited by the Geneva Convention. We reach the ultimate conclusion that Krauch, by his activities in connection with the allocation of concentration-camp inmates and forced foreign laborers, is Guilty under Count Three.

Ter Meer:

The defendant ter Meer, as the technical leader of Farben as well as head of Sparte II and chairman of the Technical committee, had general supervision of matters pertaining to production and new construction. He discussed the expansion of Buna production with the Reich Ministry of

Economics on several occasions. On 2 November 1940 that Ministry approved the expansion and advised Farben through ter Meer and Ambros to choose an appropriate site in Silesia on which to erect a plant. Ter Meer was Ambros' immediate superior, and to that superior Ambros reported on numerous occasions. Ter Meer states, "I believe that most of the information I had on the building of the Auschwitz plant came either through correspondence or through conversations with Ambros, and Ambros has in very long conversations shown me all the things which I call good industrial conditions. I know that he brought me a map and that he showed me everything, but according to the best of my recollection he did not draw special attention to the existence of the concentration camp. Ambros himself in the TEA developed, with the help of a map of the site of Auschwitz, the general conditions, the size, and also the way the factory should be built. I do not recall that he at that time discussed that some of the labor would be drawn from the nearby concentration camp, but I would say that Ambros, who in his reports of this kind was very exact, probably mentioned it, but I am not positive."

That the concentration camp figured in the early plans with respect to Auschwitz is disclosed in the documents referred to in our general discussion of that project. There are other documents and reports of a similar nature. For instance, on 16 January 1941 at a discussion in Ludwigshafen between representatives of Farben and Schlesien-Benzin, at which Ambros was present, a report was given by a director of the latter firm regarding the desirability of the Auschwitz site. It was reported that the inhabitants of Auschwitz consisted of 2,000 Germans, 4,000 Jews and 7,000 Poles. The Jews and Poles were to be turned out so that the town would be available for the staff of the factory. The report then states: "A concentration camp will be built in the immediate neighborhood of Auschwitz for the Jews and Poles."

At a regional planning meeting on 31 January 1941, attended by Chief Engineer Santo of the Ludwigshafen Plant, who later became a member of

the Auschwitz Planning Committee, the labor problems of Auschwitz were again discussed, and it is stated in the report that, "The concentration camp already existing with approximately 7,000 prisoners is to be expanded. Employment of prisoners for the building project possible after negotiations with the Reichsfuehrer SS."

We have already referred to the meeting of the Plastics and Rubber Committee attended by ter Meer and Ambros on 23 October 1941, at which reference was made to the valuable support given by the Auschwitz concentration camp.

Ter Meer personally visited the Auschwitz site in October 1941. He was accompanied on this inspection by Hoess, the camp commandant. He says: "Hoess was in no way favorable to sending concentration-camp inmates to the Auschwitz Works. He wanted them to work for the factory in the camp itself."

Ter Meer again visited the Auschwitz site in November 1942 and also the Monowitz Labor Camp, in which the concentration-camp inmates who were working on the building site were housed.

The evidence clearly establishes that one of the chief problems of Farben in connection with the building of the Auschwitz Plant was the procurement of labor for the construction work. Thousands of unskilled laborers were required, whose work was of course only temporary and who would not become permanent employees. It was the type of labor that could be procured through the concentration camp and the Sauckel program. The captured documents to which we have referred establish beyond question that the availability of concentration-camp labor figured in the planning of the Auschwitz construction. Ambros played a major role in this planning. His immediate superior with whom he had frequent contact and to whom he made detailed reports was ter Meer. The overall field of new construction was one in which ter Meer was both active and dominant. It is indeed unreasonable to conclude that, when Ambros sought the advice of and reported in detail to ter Meer, the conferences were



confined to such matters as transportation, water supply, and the availability of construction materials and excluded that important construction factor, labor, in which the concentration camp played so prominent a part. Ter Meer's visits to Auschwitz were no doubt as revealing to him as they are to this Tribunal. Hoess was reluctant to have his inmates work on the plant site. He preferred to keep them within the camp. These workers were not forced upon Farben. The inference is strong that Farben officials subordinate to ter Meer took the initiative in securing the services of these inmates on the plant site. This inference is further supported by the fact that Farben at its own expense and with its own funds appropriated by the TEA, of which ter Meer was chairman, built Camp Monowitz for the specific purpose of housing its concentration-camp workers. We are convinced beyond a reasonable doubt that the officials in charge of Farben construction went beyond the necessity created by the pressure of governmental officials and may be justly charged with taking the initiative in planning for and availing themselves of the use of concentration-camp labor. Of these officials ter Meer had greatest authority. We cannot say that he countenanced or participated in abuse of the workers. But that alone does not excuse his other wise well-established guilt under Count Three.

Other Members of the TEA and the Plant Leaders:

In addition to the Defendants ter Meer and Ambros, the Defendants Gajewski, Hoerlein, Eberlein, Jaekne, Krienne, Lautenschlaeger, Schneider, and Wurster were also members of the Technical Committee. These defendants were plant leaders or managers of one or more of the important plants of Farben. These plants were integrated into the war economy of the Reich by order of governmental authority. In a Hitler decree regarding the protection of armament economy, dated 21 March 1942, war essential requirements were given absolute priority in the allocation of available manpower. Plant leaders were ordered to consider the necessities of the Reich in war economy as if they were their own. "All con-

siderations, arising from personal interests or from the desire for peace, must be discarded ... Whoever disregards this trust and offends against the conduct expected of a plant leader, will be subjected to unrelenting, most severe punishment...."

This decree was supplemented by other issued by Hitler and by proclamations of his subordinate officials, dealing with production quotas, allocation of labor, priorities for raw materials, and other measures looking toward coordination within the field of armament economy. These were further supplemented by orders prescribing in still more detail measures to be taken and restrictions to be imposed. For instance, in the matter of labor, these orders covered hours of work, food, clothing, and housing, and made distinctions in the treatment of various kinds of workers. The eastern workers generally were to be treated with greater severity than the other classes.

A system of armament inspectorates was set up which covered plants connected with the armament industry. The inspectors learned every detail about the factories within their respective districts and the conditions therein with regard to production orders and manpower. They were directed to supervise the allocation of labor, and the proper consumption of raw materials on quota, plant maintenance, coal, etc., in the plants of which they were in charge. Thus it appears that the plant leaders were given little opportunity to exercise initiative in matters pertaining to production. They were all well informed of and knew that compulsory foreign workers, prisoners of war and concentration camp inmates were being employed in the Farben plants and they acquiesced in this practice under the pressure of conditions as they then existed in the Reich. We are not convinced from the proof that any of these defendants exercised initiative in obtaining forced labor under such circumstances as would deprive them of the defense of necessity. Ambros made a report at a meeting of the TEA on 21 April 1941 in which he specifically mentioned that concentration camp inmates were being utilized in construction work at the Buna plant Auschwitz, but the extent

of his disclosures is not revealed by the evidence. It is not established that the members of the TEA were informed of or that they knew of the initiative being exercised by the Defendants Ambros, Buetefisch, and Duerrfeld in obtaining workers for the Auschwitz project, or that the availability of such labor was one of the determining factors in the location of the Auschwitz site. The affiant Struss, Director of the Office of the Technical Committee testified:

"The members of the TEA certainly knew that I.G. employed concentration camp inmates and forced laborers. That was common knowledge in Germany, but the TEA never discussed those things. TEA approved credits for barracks for 160,000 foreign workers for I.G."

The members of the TEA, with the exception of the chairman ter Meer, were plant leaders. Under the decentralized system of the Farben enterprise each leader was primarily responsible for his own plant and was generally uninformed



as to the details of operations at other plants and projects. Membership in the TEA does not import knowledge of these details. As plant leaders each was subject to the orders and supervision of the Reich authorities with respect to the operation of his own plant. He was not required to assume that governmental orders and decrees were being exceeded or that other members were taking criminal initiative in the field of employment. There is a dearth of evidence regarding information made available to the members of the TEA, other than Ambros, about conditions at Auschwitz. We cannot assume that the general membership of the committee knew of the initiative displayed by Ambros in planning for or obtaining the use of concentration camp workers or forced laborers on the construction project. On this state of the record we are not prepared to find that the members of the TEA, by voting appropriations for construction and housing at Auschwitz and other Farben plants, can be considered as knowingly authorizing and approving the course of criminal conduct which we have found to be present in the cases of the individual defendants whose guilt we have already found to be established.

Concerning the charges of mistreatment of forced foreign workers and prisoners of war in the Farben plants of the various works combines, much conflicting evidence has been presented. Its evaluation impels us to find that as a general policy Farben attempted to carry out humane practices in the treatment of its workers and that those individual defendants did what was possible under then existing conditions to alleviate the miseries inherent in the system of slave labor. Huge sums were expended for housing and a variety of welfare purposes. There were many isolated abuses of individual workers but it has not been shown that such acts were countenanced by any of these defendants nor can it be said that they went beyond what the regulations required in the treatment or discipline of the workers. Here again it must be recalled that the Gestapo was ever on hand to enforce compliance by an employer with what the system demanded. At the Landsberg plant, one

of the units under the jurisdiction of the Defendant Gajewski, a number of prisoners of war died during the course of their work. We do not consider that the proof establishes that this resulted from mistreatment by Farben Officials. The military authorities were largely responsible for the food, treatment and allocation to duties of prisoners of war. The proof presented on this matter is consistent with the inference that the prisoners of war were in a poor state of health when they arrived and that this was the cause of their deaths rather than work or ill-treatment. Nor may we, in justice, hold the Defendant Buergin responsible for the two criminal atrocities occurring at the Bitterfeld plant. On one occasion a Russian prisoner was shot attempting to escape confinement. There is no showing that Buergin had any connection with the incident or that he countenanced or approved any such action. Buergin was not at the Bitterfeld plant on the occasion when the Gestapo publicly hanged five Russians at one of the camps to intimidate the other workers. The record shows that the plant management protested the contemplated action of the Gestapo and withheld, at no little risk, its cooperation. The evidence relied upon by the Prosecution to establish initiative on the part of individual plant leaders in obtaining and using compulsory labor has been carefully considered by the Tribunal. Without reviewing each item of evidence in detail it is our conclusion that the action of the defendants in this regard has not been established beyond reasonable doubt.

It is contended that Schneider, as the Chief Plant Leader of Farben and that he may be held criminally liable for the employment and mistreatment of workers. As we analyze the position of Schneider it is our conclusion that his functions did not supersede the authority of the local plant leaders. He was a general coordinator in the field of housing and welfare matters affecting more than one plant but there is not sufficient evidence to establish that he exercised initiative in the procurement or allocation of labor within Farben. We have considered evidence as to the Leuna plant, of which Schneider was also

the leader, and cannot conclude that it proves initiative of a character to deprive him of the defense of necessity which has otherwise been established.

It is our conclusion and we hereby find and adjudge that the Defendants Gajewski, Hoerlein, Buerger, Jaehne, Kuehne, Lautenschlaeger, Schneider, and Wurster are Not Guilty under Count Three of the Indictment.  
Remaining Defendants:

There can be no doubt that the Defendant Schmitz, Chairman of the Vorstand, and the other Vorstand members not previously mentioned, namely, the Defendants von Schnitzler, von Knieriem, Haefliger, Ilgner, Mann, and Oster, all knew that slave labor was being employed on an extensive scale under the forced labor program of the Third Reich. Schmitz twice reported to the Aufsichtsrat on the manpower problems of Farben pointing out that it had become necessary to make up for the shortage of workers by employment of foreigners and prisoners of war. This evidence does not establish that Farben was taking the initiative in the illegal employment of prisoners of war. Neither Schmitz nor any of the members of the Vorstand here under discussion were shown to have ever exercised functions in the allocation or recruitment of compulsory labor. We cannot say that it has been proved that initiative in the procurement of concentration camp inmates was ever exercised by these defendants. The proof does not establish to our satisfaction that, in approving the Auschwitz project, the Vorstand considered the employment of concentration camp inmates to be one of the factors entering into the decision for the location of the Auschwitz plant. It is not even clearly established that they knew inmates would be so used at the time of giving such approval. Their knowledge was necessarily less than that of members of TEA as to whom we have likewise indicated, we consider the proof to be insufficient. What we have said in general on the subject of mistreatment of workers in the Farben plants applies equally to these defendants. We cannot hold that they are responsible criminally for the occasional acts of mistreatment of labor employed in the



various Farben plants nor do we consider these defendants to be responsible for the occurrences at the Auschwitz construction site.

On the record before us we find and adjudge that the Defendants Schmitz, von Schnitzler, von Knieriem, Haeffliger, Ilgner, Mann, and Oster are Not Guilty under Count Three.

The Defendants Gattineau, von der Heyde, and Kugler were not members of Farben's Vorstand, nor were they members of the Technical Committee. No substantial evidence of an incriminating character connects them with any of the charges in Count Three in a manner sufficient to establish their guilt. Each of these three defendants is, therefore, acquitted of all charges under this Count.

THE PRESIDENT:

COUNT FOUR

This Count charges that:

"The Defendants Schneider, Bueteufisch, and von der Heyde are charged with membership, subsequent to 1 September 1939, in Die Schutzstaffeln der Nationalsozialistischen Deutschen Arbeiterpartei (commonly known as the 'SS'), declared to be criminal by the International Military Tribunal, and Paragraph 1 (d) of Article II of Control Council Law No. 10."

It is a matter of history that the organization referred to in the Indictment as the "SS" was established by Hitler in 1925 and that membership therein was entirely voluntary until 1940, when conscription was also inaugurated. The SS was composed of several units, many of which were utilized in the perpetration of some of the most reprehensible atrocities committed during the Nazi regime.

Article II, 1, (d) of Control Council Law No. 10 provides that:

"1. Each of the following acts is recognized as a crime: . . .

"(d) Membership in categories of a criminal group or organization declared

criminal by the International Military  
Tribunal."

Article 10 of the Charter of the IMT provides:

"In cases where a group or organization is declared criminal by the Tribunal, the competent national authority of any Signatory shall have the right to bring individuals to trial for membership therein before national military or occupation courts. In any such case, the criminal nature of the group or organization is considered proved and shall not be questioned."

In dealing with the SS the IMT treated as included therein all persons who had been officially accepted as members of any of the branches of said organization, except its so-called riding units. The Tribunal declared to be criminal those groups of said organizations which were composed of members who had become or remained such with knowledge that such groups were being used for the commission of war crimes or crimes against humanity connected with the war, or who had been personally implicated as members of said organization in the commission of such crimes. Specifically excluded from the classes of members to which the Tribunal imputed criminality, however, were those persons who were drafted into membership by the State in such a way as to give them no choice in the matter and who had committed no such crimes and those persons who had ceased to belong to any of said organizations prior to 1 September 1939.

The IMT said:

"A criminal organization is analogous to a criminal conspiracy in that the essence of both is cooperation for criminal purposes. There must be a group bound together and organized for a common purpose. The group

must be formed or used in connection with the commission of crimes denounced by the Charter. Since the declaration with respect to the organizations and groups will, as has been pointed out, fix the criminality of its members, that definition should exclude persons who had no knowledge of the criminal purposes or acts of the organization and those who were drafted by the State for membership, unless they were personally implicated in the commission of acts declared criminal by Article 6 of the Charter as members of the Organization. Membership alone is not enough to come within the scope of those declarations."

Finally, the IMT made certain recommendations, from which we quote:

"Since declarations of criminality which the Tribunal makes will be used by other courts in the trial of persons on account of their membership in the organizations found to be criminal, the Tribunal feels it appropriate to make the following recommendations: . . .

"2. Law No. 10, to which reference has already been made, leaves punishment entirely in the discretion of the trial court even to the extent of inflicting the death penalty.

"The De-Nazification Law of 5 March 1946, however, passed for Bavaria, Greater-Hesse, and Wurttemberg-Baden, provides definite sentences for punishment in each type of offense. The Tribunal recommends that in



no case should punishment imposed under Law No. 10 upon any members of an organization or group declared by the Tribunal to be criminal exceed the punishment fixed by the De-Nazification Law. No person should be punished under both laws."

For having actively engaged in the National Socialistic tyranny in the SS, the De-Nazification Law of 5 March 1946, for Bavaria, Greater-Hesse and Wurttemberg-Baden, fixes a maximum penalty of internment in a labor camp for a period of not less than two nor more than ten years in order to perform reparations and reconstruction work, against which political internment after 8 May 1945 may be taken into account. There are also provisions for confiscation of property and deprivation of civil rights.

In its Preliminary Brief the Prosecution says that "it seems totally unnecessary to anticipate any contention that intelligent Germans, and in particular persons who were SS members for a long period of years, did not know that the SS was being used for the commission of acts amounting to war crimes and crimes against humanity..!" This assumption is not, in our judgment, a sound basis for shifting the burden of proof to a defendant or for relieving the Prosecution from the obligation of establishing all of the essential ingredients of the crime. Proof of the requisite knowledge need not, of course, be direct, but may be inferred from circumstances duly established.

Tribunal II in passing upon the question of the guilt of the Defendant Scheide on a charge of membership in the SS in the case of the United States v. Pohl, et al (Case No. 4), said:

"The defendant admits membership in the SS, an organization declared to be criminal by the Judgment of the International Military Tribunal, but the Prosecution has offered no evidence that the defendant had

knowledge of the criminal activities of the  
SS, or that he remained in the organization  
after September 1939 with such knowledge, or  
that he engaged in criminal activities while  
a member of such organization.

"Therefore the Tribunal finds and adjuges that the Defendant Rudolf Scheide is not guilty as charged in Count VI of the Indictment."

The Defendant Schneider was a sponsoring member of the SS from 1933 until 1945. As such member his only direct contact with said organization arose out of the payment of dues.

After quoting from that part of the IMT Judgment in which the matter of criminal responsibility for membership in the SS was discussed, Tribunal III in the case of the United States v. Aistetter, et al., (Case No. 3), transcript page 10906, in the course of its opinion said: "It is not believed by this Tribunal that a sponsorship membership is included in this definition" We are not disposed to disagree with that conclusion.

The membership records of the SS show that the Defendant Buete-fish became an Ehrenfuhrer (Honorary Leader) of that organization on 20 April 1939; that contemporaneously therewith he was promoted to the rank of Hauptsturmfuhrer (Captain); that on 30 January 1941 he was made a Sturmbannfuhrer (Major); and that he became an Obersturmbannfuhrer (Lt. Colonel) on 5 March 1943. The same records disclose that said defendant was assigned initially to the Upper Sector Elbe, from 1 May to 1 November 1941 to the Personnel Branch of the Main Office, and after the last mentioned date to the SS Main Office proper.

In explanation of his connections with the SS, the defendant detailed the following:

Soon after he became Deputy Manager of the Leuna Plant of Farben in 1934 he came into contact with one Kransfuss, the Executive Secretary of the Himmler Circle of Friends and the Chairman of the Vorstand of ERABAG (the abbreviation for a corporation producing gasoline from lignite), whom the defendant had first come to know when they were schoolmates.



During the years following the renewal of their contacts, the defendant made frequent use of his personal relationship to Kranefuss and the latter's good offices in connection with business matters and, particularly, for the protection of certain Jews and other oppressed persons in the welfare of whom the defendant had become interested. Early in 1939 Kranefuss suggested to the defendant that intervention on behalf of politically oppressed persons would be much easier if the defendant should affiliate himself with the SS. To this the defendant replied that on account of his professional and personal convictions he could not subscribe to the membership oath, submit to the SS authority of command, attend its functions, or wear its uniform. The defendant says that he believed that this would put an end to the suggestion that he should affiliate himself with the organization but that, much to his surprise, Kranefuss advised him soon thereafter that he might be made an honorary member, with the reservations enumerated above. The defendant says that he thereby found himself confronted with an alternative which he did not anticipate, namely, that of losing the friendship of Kranefuss, which he had found most helpful in aiding the oppressed persons who were the direct objects of SS intolerance, or of accepting honorary membership, conditioned as aforesaid. He chose the latter course, and says that to the end he never took the SS oath, submitted to its authority of command, attended any of its functions, or owned, or wore a uniform. When, after he became an honorary member, it was suggested to the defendant that he should procure a uniform for use on special occasions, Buete fish pointed to the conditions that he had attached to his acceptance of membership and stood adamant. This resulted in a controversy with Kranefuss, in the course of which the defendant asked that his name be deleted from the list of SS rank holders. The defendant says, also, that his promotions and assignments were perfunctory and automatic and without instigation on his part.

The record contains corroboration of the defendant's statements, and none of those are directly refuted by the Prosecution.

In the appraisal of the defendant's status in the SS, the Prosecution attaches much significance to his intimate relationship to Kranefuss and the latter's close affiliation with Himmler and his Circle of Friends. It appears that the defendant became a member of this Circle about the same time that he was made an honorary leader of the SS and that he was a regular attendant at the meetings of the Circle, including one occasion when the entire membership was the guest of Himmler at his field Headquarters in East Prussia. Concerning these meetings of the Himmler Circle, Tribunal IV in Case 5 (U.S. v. Flick, et al.,) after fully considering the character and activities of that group, including the part played by Kranefuss therein, said:

"We do not find in the meetings themselves the sinister purposes as described to them by the Prosecution .. so far we see nothing criminal or immoral in the defendant's attendance at these meetings.

As a group (it could hardly be called an organization) it played no part in formulating any of the policies of the Third Reich."

The Prosecution calls attention to the fact, however, that the Circle of Friends contributed more than a million Reichsmarks annually to the SS during each of the years 1941, 1942, and 1943. and that 100,000 of each of these gifts came from Farben, through the Defendants Schmitz and Bueterfish. These facts, if established, would only be material to the charge here under consideration as tending to show, in connection with other facts, that Bueterfish had knowledge of the criminal purposes or acts of the SS at the time he became

or during the period that he remained a member -- if he was, in fact, a member. In other words, it is first necessary for us to determine whether the defendant was a member of the SS in the sense contemplated by the IMT when it held such membership to be criminal. Unless and until it is first ascertained that the defendant was a member in the accepted sense, we are unconcerned with the question as to whether he had knowledge of the criminal activities of the organization.

The exhaustive opinion of the supreme Spruchkammer Court of Hamm, rendered in affirming the case in which Baron von Schroder was convicted for honorary membership in the SS, had been cited and relied upon by the prosecution. The factual distinction between the case with which we are presently concerned and that of von Schroder is clearly disclosed by the opinion above referred to. In noticing the character of von Schroder's relationship to the SS, the Supreme Spruchkammer Court said:

"At the Reich Party Meeting in 1936 he (von Schroder) was told orally by Himmler that he had been accepted as an honorary member with the rank of Standartenfuhrer by the Allgemeine (General) SS.

"The defendant after his acceptance into the Allgemeine SS and an honorary member, received, as is admitted by the appellant, a membership number, paid regularly his membership dues, was promoted to SS Overfuhrer in 1939 and SS Brigadefuhrer in 1941, showed up at special occasions wearing the uniform of his rank, although he never participated in any SS duties and was not assigned to any definite SS unit, but was registered with the Staff as an assigned leader."



As distinguished from von Schroeder, who appeared at special occasions in the uniform of his rank, the defendant Buete fish consistently refused to procure a uniform in the face of positive demands that he do so. This circumstance, when coupled with the other significant reservations which the defendant imposed and consistently maintained when and after he accepted honorary membership, would seem to place him in an entirely different category from that of von Schroeder.

We do not attach any special significance to the fact that the defendant was classified as an honorary member, but we are of the opinion that the defendant's status in the organization must be determined by a consideration of his actual relationship to it and its relationship to him. Membership in an organization ordinarily involves reciprocally, rights privileges, and benefits accruing to the member from the organization and corresponding duties, obligations, and responsibilities flowing to the organization from the member. One of the advantages to be gained by an organization from having so-called honorary members is the added prestige accruing to it from having prominent personages identified with it. This point was emphasized by the supreme Spruchkammer in dealing with von Schroeder, but even that benefit is negated here by the showing of the refusal of Buete fish to attend the organization's functions or wear its insignia.

We are constrained to hold that the evidence does not establish beyond a reasonable doubt that the defendant Buete fish was a member of an organization declared to be criminal by the Judgment of the IMT.

The defendant von der Heyde is the last person named in Count Four of the Indictment. He became a member of the Reitersturm (Riding Unit) of the SS in Mannheim in 1933, his serial number being 200,180.

This is the group within the SS that the IMT declared not to be a criminal organization.

In 1936 the defendant moved to Berlin to become a member of the Economic Policy Department (WIPO) of Farben's NW-7 Office. The prosecution contends that while he was in Berlin the defendant was an active member of the Allgemeine (General) SS, and it sought to establish that fact by documentary proof as follows:

1. An SS personnel file, indicating the defendant's number in that organization as 200,180 and entries to the effect that he was promoted to 2nd Lieutenant on 30 January 1938, the 1st Lieutenant on 10 September 1939, and to Captain on 30 January 1941. Opposite the entry of the defendant's promotion to 2nd Lieutenant in 1938 is a notation to the effect that he was a Fuehrer in the SD."

2. An SS Racial and Settlement questionnaire, filled out by the defendant, likewise giving his SS number as 200,180, his rank as a 2nd Lieutenant, his unit as "SD -- Main Office," and his activity as "Honorary Collaborator of SD -- Main Office."

3. The defendant's written application for permission to marry (required of all members of the SS and also of the Wehrmacht) addressed to the Reich Chief of the SS on 6 May 1939. On this printed form were listed four classes of SS memberships (not including the Riding Unit), and that of the General SS had been understood, indicating, so the Prosecution says, that the defendant at the time regarded himself as a member of that group. This document also gave the defendant's membership number as 200,180, his unit as "SD -- Main Office," and his superior as Colonel Six, a Department Chief in that office.

The defendant testified that when he left Mannheim for Berlin in 1936, he was placed on a leave status by the SS Riding Unit. He further said that he never thereafter paid dues to the Riding Unit, although he did pay party dues at Berlin, a part of which may have been diverted to the SS by party officials without his knowledge.

30 Jul.48-M-GJ-4-7-Schwab-  
Court 6 case 6

He emphatically denied that he had ever affiliated, either directly or indirectly, with any SS group, other than said Riding Unit.

No responsibility is assumed by the defendant for the data shown on his SS personnel file produced by the Prosecution.

He testified specifically that there was no basis in fact for the memoranda theron shewing that on 30 January 1938 he was a



"Fuehrer in the SD," and he ascribes this entry to an error or a false assumption on the part of the clerk who made or kept said record.

The defendant said that his progressive promotions from 2nd Lieutenant to Captain were automatic and customary in all branches of the SS, including the Riding Units, and that no inference of membership in a criminal organization can be drawn therefrom. Significance is attached to the circumstance that in all the documents relating to the defendant's SS affiliation his membership number is given as 200,180, that being the number originally assigned to him on his first Riding Unit membership card, issued at Mannheim early in 1934.

The defendant further stated on the witness stand that when, in the middle of the year 1939, he decided to marry, he made application for permission so to do through the Berlin office of the SS, rather than that at Mannheim, for two reasons, first, because he was then residing in Berlin and, secondly, because he believed that the granting of such permission would be delayed if he went through Mannheim. His counsel points out that this conclusion was justified, as is shown by the fact that it required approximately six months for him to obtain clearance through Berlin, even though he resided there and personally made application through that office.

By way of explaining how he came to give the SD - Main Office as his organization unit, Honorary Collaborator of SD - Main Office as his SS activity, and Colonel Six as his superior, on his R and S questionnaire and in his formal application for permission to marry, the defendant has said that these constituted the SS offices, agencies, and persons with which he came in contact through his NW 7 activities at Berlin, and that he made use of this data in the hope that it would expedite approval of his marriage application. In any event, the defendant asserts that this memoranda is not inconsistent with his Riding Unit membership; nor does it support an inference that he was a member of the SD, since it has been made to appear that a Riding

Unit member could well have been accredited to and an honorary assistant of an SD - Main Office. This was corroborated by the testimony of the witness Ohlendorf, Chief of the SD, who, though he was convicted by it, was complimented by Tribunal II for his truthfulness on the witness stand.

In dealing with the SD, the IMT included "all local representatives and agents, honorary or otherwise, whether they were technically members of the SS or not," and concluded that said organization was criminal. In this case, however, von der Heyde is charged, specifically, with membership in the SS, not the SD, and the burden is on the Prosecution to establish that fact. There was no showing that membership in the SS was a necessary prerequisite to membership in the SD. The Judgment of the IMT indicated otherwise and treats these groups as separate, though related, organizations.

Taking into account that the only definitely established affiliation of the defendant was with the non-culpable Riding Unit of the SS and that the evidence tending to show that he subsequently became a member of the General SS arises wholly out of the innocuous incidents connected with his efforts to obtain a marriage license, we must conclude that the guilt of the defendant von der Heyde under Count Four has not been satisfactorily established.

The Defendants Schneider, Bueckfisch and von der Heyde are acquitted of the charges contained in Count Four of the Indictment.

By numerous objections and formal motions made during the course of the trial and in their final arguments and closing briefs several of the attorneys for defendants have questioned the validity of the laws, orders, and directives by virtue of which this Tribunal was created and under which it has functioned. We have again given careful consideration to these matters and have satisfied ourselves that this Tribunal was lawfully organized and constituted, that it has jurisdiction over the subject matter of this proceeding and over the

persons of the defendants before it, and that it is fully authorized and competent to render this Judgment.

The President now recognizes Judge Hobert, who wishes to make a statement for the record.

JUSTICE HEBERT: I concur in the result reached by the majority under Counts One and Five of the Indictment acquitting all of the defendants of crimes against peace, but I wish to indicate the following: The Judgment contains many statements with which I do not agree and in a number of respects is at variance with my reasons for reaching the result of acquittal. I reserve the right, therefore, to file a separate concurring opinion on Counts One and Five.

As to Count Three of the Indictment, I respectfully dissent from that portion of the Judgment which recognizes the defense of necessity as applicable to the facts proven in this case. It is my opinion, based on the evidence, that the defendants have not established the defense of necessity. I conclude from the record that Farben, as a matter of policy, with the approval of the TDA and the members of the Vorstand, willingly cooperated in the slave-labor program, including utilization of forced foreign workers, prisoners of war, and concentration-camp inmates, because there was no other solution to the manpower problems. As one of the defendants put it in his testimony, Farben did not object because "we simply did not have enough workers any longer". It was generally known by the defendants that slave labor was being used on a large scale in the Farben plants, and the policy was tacitly approved. It was known that concentration-camp inmates were being used in construction at the Auschwitz Buna plant, and no objection was raised. Admittedly, Farben would have preferred German workers rather than to pursue the policy of utilization of slave labor. Despite this fact, and despite the existence of a reign of terror in the Reich, I am, nevertheless, convinced that compulsion to the degree of depriving the defendants of moral choice



did not in fact operate as the conclusive cause of the defendants' actions, because their will coincided with the governmental solution of the situation, and the labor was accepted out of desire to, and the only means of, maintaining war production.

Having accepted large-scale participation in the program and, in many instances, having exercised initiative in obtaining workers, Farben became inevitably connected with its operation, with all the discriminations and human misery which the system of detaining workers in a state of servitude entailed. The cruel and inhuman regulations of the system had to be enforced and applied in the working of slave labor. The system demanded it. Efforts to ameliorate the condition of the workers may properly be considered in mitigation, but I cannot accept the view that persons in the positions of power and influence of these defendants should have gone along with the slave-labor program.

Those who knowingly participated in and approved the utilization of slave labor within the Farben organization should bear a serious responsibility as being connected with and taking a consenting part in war crimes and crimes against humanity, as recognized in Control Council Law No. 10.

I concur in the conviction of those defendants who have been found guilty under Count III, but the responsibility for the utilization of slave labor and all incidental toleration of mistreatment of the workers should go much further and should, in my opinion, lead to the conclusion that all of the defendants in this case are guilty under Count Three, with the exception of the defendants von der Hayde, Gattiou, and Kugler, who were not members of the Vorstand. I, therefore, dissent as to this aspect of Count Three, and reserve the right to file a dissenting opinion with respect to that part of the Judgment devoted to Count Three.

30 July 1948 ~~M-ED-5-5~~ Stewart (Ramler)  
COURT VI, CASE VI

I have signed the Judgment with these reservations, and I hand a copy of this expression to the Secretary General for the record.

THE PRESIDENT: The Tribunal will rise for a few minutes' recess.

(A short recess was taken.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: The Tribunal is about to render its formal judgment and impose its sentences. Before doing so, may I ask that the defendants who are convicted each arise as his name is called, face the Tribunal, and remain standing in the dock until the sentence has been imposed. The defendants who have been acquitted need not arise when their names are called.

United States Military Tribunal VI, having heard the evidence, the arguments of counsel, the statements of the defendants, and having considered the briefs submitted by the parties, now renders Judgment and imposes sentences in Case No. 6, the United States of America vs. Carl Krauch et al. It is accordingly considered, adjudged, and decreed as follows, to wit:

DEFENDANT KRAUCH: The Defendant Carl Krauch is found Guilty under Count Three and Not Guilty under Counts One, Two, and Five of the Indictment. For the offense of which he has been found Guilty, the Tribunal sentences said defendant to imprisonment for six (6) years. He shall, however, be allowed credit on said sentence for the period of time that he has already been in custody, to wit: from 3 September 1946 to the date of this Judgment, inclusive.

You may be seated. The Defendant Hermann Schmitz is found Guilty under Count Two and Not Guilty under Counts One, Three, and Five of the Indictment. For the offense of which he has been found Guilty, the Tribunal sentences said defendant to imprisonment for four (4) years. He shall, however, be allowed credit on said sentence for the period of time that he has already been in custody, to wit: from 7 April 1945 to the date of this Judgment, inclusive.

The Defendant Georg von Schnitzler is found Guilty under Count Two and Not Guilty under Counts One, Three, and Five of the Indictment. For the offense of which he has been found Guilty, the Tribunal sentences said defendant to imprisonment for five (5) years.



He shall, however, be allowed credit on said sentence for the period of time that he has already been in custody, to wit: from 7 May 1945 to the date of this Judgment, inclusive.

The Defendant Fritz ter Meer is found Guilty under Counts Two and Three and Not Guilty under Counts One and Five of the Indictment. For the offenses of which he has been found Guilty, the Tribunal sentences said defendant to imprisonment for seven (7) years. He shall, however, be allowed credit on said sentence for the period of time that he has already been in custody, to wit: from 7 June 1945 to the date of this Judgment, inclusive.

The Defendant Otto Ambros is found Guilty under Count Three and Not Guilty under Counts One, Two, and Five of the Indictment. For the offense of which he has been found Guilty, the Tribunal sentences said defendant to imprisonment for eight (8) years. He shall, however, be allowed credit on said sentence for the period of time that he has already been in custody, to wit: from 17 January 1946 to 1 May 1946, and from 13 December 1946 to the date of this Judgment, both inclusive.

DEFENDANT ERNST BUECKING: The Defendant Ernst Buecking is found Guilty under Count Two and Not Guilty under Counts One, Three, and Five of the Indictment. For the offense of which he has been found Guilty, the Tribunal sentences said defendant to imprisonment for two (2) years. He shall, however, be allowed credit on said sentence for the period of time that he has already been in custody, to wit: from 23 June 1947 to the date of this Judgment, inclusive.

DEFENDANT HEINRICH BUETEFSCH: The Defendant Heinrich Bueteftsch is found Guilty under Count Three and Not Guilty under Counts One, Two, Four, and Five of the Indictment. For the offense of which he has been found Guilty, the Tribunal sentences said defendant to imprisonment for six (6) years. He shall, however, be allowed credit on said sentence for the period of time that he has already been in custody, to wit: from 11 May 1945 to the date of this Judgment, inclusive.

The Defendant Paul Macfliger is found Guilty under Count Two and Not Guilty under Counts One, Three, and Five of the Indictment. For the offense of which he has been found Guilty, the Tribunal sentences said defendant to imprisonment for two (2) years. He shall, however, be allowed credit on said sentence for the period of time that he has already been in custody, to wit: from 11 May 1945 to 30 September 1945 and from 3 May 1947 to the date of this Judgment, both inclusive.

The Defendant Max Ilgnor is found Guilty under Count Two and Not Guilty under Counts One, Three, and Five of the Indictment. For the offense of which he has been found Guilty, the Tribunal sentences said defendant to imprisonment for three (3) years. He shall, however, be allowed credit on said sentence for the period of time that he has already been in custody, to wit: from 7 April 1945 to the date of this Judgment, inclusive. Since said defendant has already been in prison for a period of time in excess of the penalty herein imposed, it is ordered that he be discharged upon the final adjournment of the Tribunal.

DEFENDANT FRIEDRICH JAENVE: The Defendant Friedrich Jaehne is found Guilty under Count Two and Not Guilty under Counts One, Three, and Five of the Indictment. For the offense of which he has been found Guilty, the Tribunal sentences said defendant to imprisonment for one and one-half (1 1/2) years. He shall, however, be allowed credit on said sentence for the period of time that he has already been in custody, to wit: from 18 April 1947 to the date of this Judgment, inclusive.

DEFENDANT HEINRICH OSTER: The Defendant Heinrich Oster is found Guilty under Count Two and Not Guilty under Counts One, Three, and Five of the Indictment. For the offense of which he has been found Guilty, the Tribunal sentences said defendant to imprisonment for two (2) years. He shall, however, be allowed credit on said sentence for the period of time that he has already been in custody, to wit: from 31 December 1946 to the date of this Judgment, inclusive.

The Defendant Walter Duerrfeldt is found Guilty under Count Three and Not Guilty under Counts One, Two, and Five of the Indictment. For the offense of which he has been found Guilty, the Tribunal sentences said defendant to imprisonment for eight (8) years. He shall, however, be allowed credit on said sentence for the period of time that he has already been in custody, to wit: from 9 June 1945 to 27 June 1945, and from 5 November 1945 to the date of this Judgment, both inclusive.

DEFENDANT HANS KUGLER: The Defendant Hans Kugler is found Guilty under Count Two and Not Guilty under Counts One, Three, and Five of the Indictment. For the offense of which he has been found Guilty, the Tribunal sentences said defendant to imprisonment for one and one-half (1 1/2) years. He shall, however, be allowed credit on said sentence for the period of time that he has already been in custody, to wit: from 11 July 1945 to 6 October 1945, and from 18 April 1947 to the date of this Judgment, both inclusive. Since said defendant has already been in prison for a period of time in excess of the penalty herein imposed, it is ordered that he be discharged upon the final adjournment of the Tribunal.

The sentences imposed by virtue of this Judgment shall be served at such prison or prisons, or other appropriate place or places of confinement, as shall be determined by competent authority.

The Defendants Fritz Gajowski, Heinrich Hoerlein, August von Knieriem, Christian Schneider, Hans Kuhn, Carl Lautenschlaeger, Wilhelm Mann, Karl Wurster, Heinrich Gattineau and Erich von der Heyde are each acquitted of all the charges in the Indictment. They will each be discharged from custody upon the final adjournment of the Tribunal.

The Tribunal now recognizes Dr. Dix, who desires to present something to the Tribunal.

DR. DIX: May it please the Tribunal, on behalf of the defendants Krauch, Schmitz, von Schnitzler, von Meer, Ambros, Buergin, Bueteifisch, Hoffliker, Ilgner, Jachne, Oster, Duerrfeldt and Kugler, I should like to ask for permission, speaking also on behalf of the defense counsel of



the gentlemen mentioned, to read a motion into the record which I am now handing to the Secretary General in the number of copies prescribed. At the same time I should like to state that in the written text the name Ambros had been stricken out by me because I have only now been able to make contact with his defense counsel Dr. Hoffmann. I should like to state now that this motion is also made on behalf of Ambros.

I shall now read it. I shall read the motion in the language in which it was drafted, the English language.

The defendants Krauch, Schmitz, von Schnitzler, ter Haar, Ambros, Baergin, Baetefisch, Hoefliger, Ilgner, Jaehne, Oster, Duerrfeld, Kuglar, and their defense counsel, each for himself, through me as speaker, move to set aside the decision and judgment of conviction, on the ground that the said decision and judgment is contrary to the facts, contrary to law, and against the weight of the evidence; on the ground that this court had no jurisdiction to hear and determine the alleged charges; and on the further ground that the facts alleged and the facts found do not constitute an offense against the law of nations or against the laws of the sovereign power of the United States.

And the said defendants and their defense counsel, each for himself, move to set aside the decision and judgment of this court, on the ground that the rulings made and the procedure followed throughout the course of this trial denied to the said defendant due process of law and was violative of the Constitution and laws of the United States, international law, and the rules of law generally applicable to the trial of criminal cases in all civilized nations;

And the defendants and their defense counsel, each for himself, move to set aside and vacate the decision and judgment of this court, on the ground that the individual justices thereof were without power to act and the Tribunal, as a whole, was never legally established and its said decision and judgment constitute an arbitrary exercise of military

power over each of the said defendants, in violation of the laws of nations and agreements made by the belligerent powers and other countries appertaining thereto; and each of the defendants and their defense counsel move for such other further and equitable relief as the circumstances warrant and as may be just and proper.

THE PRESIDENT: May I say to you and your associate counsel, and to the defendants for whom you speak, that the matters set forth in the motion have been considered by the Tribunal, as is reflected by the concluding paragraph of the Judgment of the Tribunal proper. The Tribunal now overrules said motion, and the record may so show.

And now I officially declare United States Military Tribunal VI finally adjourned.

**MICROCOPY**

**892**

**ROLL**

**15**

**END**

